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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRONTIER AIRLINES, INC.,

Plaintiff,

v.

20 Civ. 9713 (LLS)

AMCK AVIATION HOLDINGS IRELAND
LIMITED, ACCIPITER INVESTMENT
4 LIMITED, VERMILLION AVIATION
(TWO) LIMITED,

Defendants.

Bench Trial

New York, N.Y.
April 8, 2024
11:00 a.m.

Before:

HON. LOUIS L. STANTON,

District Judge

APPEARANCES

LANE POWELL PC
Attorneys for Plaintiff
BY: DAVID G. HOSENPUD
AARON SCHAER

CLIFFORD CHANCE US LLP
Attorneys for Defendants
BY: JEFF E. BUTLER
JOHN P. ALEXANDER
RISHIKA JIKARIA
GINA CROSBY

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Opening - Mr. Hosenbud

1 (In open court)

2 THE COURT: Good morning.

3 MR. HOSENPUD: Good morning, your Honor.

4 MR. BUTLER: Good morning, your Honor.

5 THE COURT: Do you want to make opening statements?

6 Or do you want to go straight to the witness?

7 MR. HOSENPUD: Your Honor, it would be the plaintiff's
8 preference to make an opening statement.

9 THE COURT: Okay. It will work better from the
10 lecturn.

11 MR. HOSENPUD: Thank you, your Honor.

12 Your Honor, David Hosenbud and Aaron Schaer on behalf
13 plaintiff. At counsel's table is Gerald Diamond, corporate
14 counsel, and corporate representative Jimmy Dempsey.

15 Your Honor, this case involves a month-to-month rent
16 deferral. This case involves a month-to-month rent deferral
17 that was expressly agreed on April 7, 2020, and it was entered
18 into by the parties to fundamentally allow for time. And that
19 time was needed to do three principal things: The first was
20 for Frontier to engage in complex delivery deferral
21 negotiations with Airbus in the center of the unrolling
22 pandemic. The second was to negotiate terms with AMCK
23 regarding rent deferral repayment. The third was for AMCK to
24 continue its process of negotiating lease concessions, or to
25 engage in what its language is called the nuclear option. And

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1 that means to terminate the Framework Agreement.

2 The Framework Agreement, the delivery of the first
3 aircraft under the six aircrafts pursuant to the Framework
4 Agreement and the rent deferral request, all occurred on
5 March 16, 2020.

6 The schedule under the Framework Agreement for the
7 delivery of these six aircraft was three in March, one in May,
8 and one in June. One of the March aircraft was delivered.
9 That occurred on March 16.

10 During the period of March, Frontier Airlines
11 continued to make its rent payments on all the aircraft already
12 under lease with AMCK. It made its rent payments on the
13 brand-new aircraft that was just delivered on March 16. And
14 all of its lease payments were current through March 2020.

15 The evidence will show that while Frontier was timely
16 on all its March lease payments, AMCK was already contemplating
17 a termination of the Framework Agreement and not fulfilling its
18 obligations, but it needed time to consider how to work those
19 options out.

20 The next aircraft under the Framework Agreement, which
21 was originally scheduled for March, was pushed into April by
22 virtue of internal sequencing at Airbus. AMCK shareholder on
23 March 24 suggests to AMCK that it needed 24 months' prepaid
24 rent for that April delivery to convince their board not to
25 stop taking the delivery.

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1 The internal AMCK communications will reflect on that
2 same day of March 24, that if they could buy themselves some
3 time, they may be able to get through the next delivery. And
4 then they would determine at that point, having a little more
5 time to see how everything develops, before having to take the
6 nuclear option.

7 On March 26, there had been delivery deferral requests
8 as I mentioned on March 16, there was a response on March 18,
9 but the first substantive response on March 26, that had
10 changes, was a request by AMCK to prepay rent on the next
11 aircraft, and then to defer the remaining four aircraft three
12 to six months.

13 Shortly after that request was made to Frontier, it
14 began pushing on Airbus with basic inquiries. We would like
15 you to consider deferring the aircraft. The responses to those
16 inquiries by Airbus was essentially you need to take delivery
17 or you will face default, but that did not deter Frontier from
18 pursuing this.

19 Similar inquiries were made by -- one inquiry was made
20 by Jimmy Dempsey. Similar inquiries were made by Spencer
21 Thwaytes, who was the vice president of the treasury. And he
22 received the same response from Airbus.

23 On April 3, Mr. Sheridan, after a phone call, provided
24 a new proposal. And that proposal basically said in order to
25 defer deliveries, you must shift the upcoming aircraft

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1 deliveries by six months.

2 Discussions were had about the difficulty that that
3 would entail, given Airbus's predisposition to not want to
4 defer deliveries on aircraft that had already been
5 manufactured. They were rolling off the assembly line, and
6 they were from Mobile, Alabama and there was no place to put
7 them. So, Mr. Dempsey pursued Airbus on April 6 again. And
8 then learned that Mobile, Alabama was going to close. It was
9 going to close for the month of April. He also realized that
10 there were rent payments due to AMCK, and he scheduled a call
11 with AMCK to discuss the fact that Mobile was closing, as well
12 as that there were rent payments, two rent payments due, and he
13 requested that they be deferred.

14 In a phone call between Robert Fanning and
15 Mr. Sheridan and Jane O'Callaghan, there was an arrangement for
16 a waiver, a grace period of 10 days, that was then confirmed in
17 writing.

18 The reason for that is explicitly noted in the chart
19 in front of you to allow Frontier to reach agreement with
20 Airbus, and to allow AMCK to reach a deferral agreement.

21 They echoed that idea to their shareholder in the box
22 below that starts with "to catch you up." And that was to give
23 us a bit more time to reach an amicable agreement, we extended
24 them a grace period.

25 Now, there was communication by Mr. Dempsey with Paul

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1 Sheridan, thanking him for that 10-day grace period and asking
2 to get on a call the next day, April 7. And on April 7, that
3 call occurred, and that is when the express waiver was
4 discussed and agreed upon.

5 Mr. Dempsey pointed out that the cycle of getting
6 Airbus to move aircraft as far as potentially six months would
7 take a great deal of time. And so they agreed to a
8 month-to-month waiver of the rent payment while Mr. Dempsey
9 worked with Airbus to negotiate as far a deferral of deliveries
10 as he possibly could, but their desire was six months.

11 On April 11, Mr. Dempsey texted Mr. Sheridan saying
12 can you give me a call, I think I've got Airbus to consider
13 moving two aircraft out to July and one aircraft out to June.

14 And then Mr. Dempsey, on the 13th of April, confirmed
15 that in an e-mail to Mr. Sheridan and requested that he would
16 like to get a deferral in place and he hoped that that would be
17 satisfactory to Mr. Sheridan.

18 The response by Mr. Sheridan, CEO of AMCK, was that
19 the idea of having the aircraft move six months was to have all
20 rent deferrals paid before the first delivery. And if it was
21 going to be only to June, one in June, and two to July, they
22 would have to recast any rent deferral agreement such that it
23 accomplished all payments on rents were done before the first
24 delivery.

25 That theme continued throughout the course of

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1 negotiations all the way up until April 30.

2 Frontier, in two instances before, one before April 30
3 and one on April 30, agreed to pay all April rents in full.
4 And in each occasion, that they did so. AMCK did not respond.
5 Did not demand. Did not make a request to have that done.

6 The evidence will demonstrate that AMCK's own writings
7 on April 30 confirmed the existence of an informal deferral
8 pending agreement with Airbus on delivery deferrals.

9 The evidence will also establish that AMCK and its
10 shareholder knew that the acceptance of April rents from
11 Frontier would obligate AMCK Aviation to move ahead with the
12 terms of the Framework Agreement.

13 Frontier continued its efforts on April 30 to move the
14 aircraft beyond June. The near-term delivery would be on June
15 and into July. It had a basic understanding with Airbus at
16 that time that they would agree to do so, even though the
17 negotiations were still ongoing.

18 Also on April 30, Frontier had received from Airbus
19 indications that they would be willing to move the last two
20 aircraft potentially out to February 2021. So three aircraft
21 to July, two additional aircraft to 2021. And it would be
22 accomplished either by Airbus agreeing or potentially having a
23 substitute lessor come in and take earlier deliveries to allow
24 the AMCK deliveries to move into Q1 2021.

25 On that date, Mr. Sheridan, in conferring with the

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1 shareholder out of Hong Kong, said that they were going to
2 basically propose what are known as quid pro quos, something in
3 exchange, of course. And those were going to be lease
4 extensions on all of the aircraft already under lease with AMCK
5 from prior years, of 4 years. And there were also going to be,
6 on the six aircraft that were subject to the Framework
7 Agreement, an elimination of the early termination option that
8 would allow Frontier to terminate the leases at year eight.
9 And if Frontier performed up until May of 2021 on all rents and
10 was current, those options would drop away. But nonetheless,
11 lease extensions on the prior 14 aircraft would eliminate the
12 early termination options completely, and those leases would go
13 to 12 years.

14 This proposal was one that would effectively cause
15 Frontier millions of dollars in debt reporting. It would
16 change the entire nature of those leases such that Frontier
17 would be in a very difficult position to obtain capital from
18 other sources, because its debt profile would have gone up
19 considerably.

20 Mr. Dempsey did receive that proposal from AMCK on
21 April 30. And the only thing that changed between the
22 communication with Mr. Sheridan and its shareholder, which had
23 a July repayment date that was on basically a
24 take-it-or-leave-it, and if Frontier did not take it, AMCK
25 would again explore the nuclear option, and that meant

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1 termination of the Framework Agreement for the allegation of
2 non-payment of April rents.

3 When Mr. Dempsey received the written offer, the only
4 thing that changed was instead of payment by July, it had to be
5 payment by May 15.

6 Due to the clause that talked about the lease
7 extensions, Mr. Dempsey communicated with Mr. Sheridan that
8 they needed to have a phone call. And in that phone call,
9 Mr. Dempsey conveyed the concerns about having lease extensions
10 and the serious impact it would have on the ability of the
11 company, Frontier, to generate capital.

12 He then proposed to Mr. Sheridan as an alternative, in
13 addition we can pay you current. As an alternative, we keep
14 the rent deferral that is current in place through May, and we
15 will offer you prepaid rent on all of the upcoming aircraft.
16 And that was an effort to balance out the deferral of rents for
17 that short period of time, April and May, with advancing the
18 rents on the new leases.

19 Mr. Sheridan told him in that phone call, I will get
20 back with you, I'll let you know, have to discuss with the
21 shareholder.

22 On May 1, while these negotiations were still ongoing,
23 Mr. Dempsey texted Mr. Sheridan any word? And he responded,
24 have a meeting essentially four hours from now, phone
25 conference with the shareholder, and Mr. Dempsey then advised,

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1 all right, Airbus has given us another 24 hours to make this
2 deal on the delivery deferrals.

3 After May 1, Mr. Sheridan did not communicate with
4 Mr. Dempsey. Mr. Dempsey then prepared an e-mail on May 8
5 recapping what had been offered on the phone call. And said
6 patiently been waiting for you to respond to our discussion.

7 That was both -- that e-mail went earlier in the day
8 and recapped the three in July aircraft move that was close to
9 completion with Airbus, two in February of 2021, the prepaid
10 rents, and clarifying that someone else would take over their
11 slots of the second half of 2020, which is what caused
12 Mr. Dempsey to be able to represent that the next deliveries
13 for AMCK would be February 2021.

14 So on May 8 these negotiations were continuing.

15 Then, late in the day, probably about 4:41
16 approximately Denver time in the afternoon, six hours later in
17 Ireland, the default notice came. And there will be testimony
18 in this record that that came as a complete surprise, given
19 where the parties were. It was sent after banking hours. But,
20 Frontier treated it as a request for payment. And within the
21 three business day grace period, wire transfers were sent out
22 on May 13 within that three-day business grace period.

23 They timely paid, same as they did before the
24 month-to-month rent deferral, and have continued to do so
25 today.

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1 Your Honor, at the close of the evidence we are going
2 to respectfully request that the Court award a judgment for
3 Frontier, and we believe the evidence will demonstrate that it
4 has been damaged in the amount of \$48,660,000 as a result of
5 the breach of the waiver agreement. Thank you.

6 MR. BUTLER: Good morning, your Honor. My name is
7 Jeff Butler from Clifford Chance. And we represent the
8 defendants, the remaining defendants in this case, who are AMCK
9 Aviation, Accipiter Investments, and Vermillion Aviation.

10 Let me just introduce you to the rest of the Clifford
11 Chance trial team for this case. In the middle of our table
12 you'll see Jack Alexander and Gina Crosby. You'll hear from
13 them this week examining some of the Frontier witnesses.
14 Closer to me is Rishika Jikaria. She plays a very important
15 role in this trial. She's making sure all the right exhibits
16 get on the Elmo machine to show you at the right time. Also
17 sitting behind us is Beverly Alcober. She is our paralegal who
18 will keep us organized behind the scenes. At the end of the
19 table is Mr. Ernie Yu. He is the former head of legal for
20 AMCK, and he currently serves as deputy general counsel at
21 AMCK's shareholder CK Asset Holdings. Mr. Yu traveled here
22 from Singapore for this hearing, he arrived over the weekend,
23 but he's normally based in Dublin, Ireland.

24 Your Honor, this case really begins with the COVID-19
25 pandemic. In March of 2020, there was tremendous uncertainty

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1 over this new virus. Cases of the disease seemed to be rising
2 exponentially in the United States. Events were being
3 canceled, quarantines and travel restrictions were being
4 imposed. Schools and businesses were closing.

5 In the midst of all this uncertainty, on March 16,
6 2020, AMCK financed the first of six aircraft deliveries under
7 the Framework Agreement. AMCK paid \$51 million to Airbus, and
8 Frontier took delivery of an A320 aircraft as lessee under a
9 12-year lease. Later that same day, Frontier sent a letter to
10 AMCK, asking for rent deferral for all of its leases, citing
11 the COVID-19 pandemic as the reason. And the March 16 letter
12 asked for deferral of rent for the next three months, through
13 June 30, 2020, with repayment of the deferred rent over a
14 nine-month period beginning on July 1st. The letter also
15 mentioned that Frontier would pay interest on the deferred
16 rent, but the amount of interest was not specified in the
17 letter.

18 And you are going to see evidence during this trial
19 that those are the three key terms of a rent deferral
20 arrangement: A rent deferral period, a repayment period, and a
21 rate of interest to be paid on the deferred rent.

22 You'll see these terms reflected in draft deferral
23 agreements that were prepared on the Frontier side, as well as
24 in a draft deferral agreement prepared by AMCK.

25 One of the things about the March 16 letter, it states

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1 that the deferral agreement would be documented in a written
2 agreement. And you are going to hear in this case that that
3 would be the normal practice in this industry. The rent
4 deferral that was being proposed would be an amendment to an
5 aircraft lease agreement, and those kinds of amendments are
6 almost always documented in writing in this business.

7 Now, this rent deferral request from Frontier did not
8 sit well with some on the AMCK side, especially at AMCK's
9 shareholder CK Assets Holding in Hong Kong. Some were unhappy
10 that on the same day that AMCK performed its obligations under
11 the Framework Agreement, and paid \$51 million, Frontier was
12 asking to suspend performance under its lease agreements
13 involving AMCK.

14 Now you might hear that Frontier made the same request
15 to all of its lessors, but AMCK was the only lessor that had
16 financed a delivery that very same day. And AMCK was expected
17 to finance at least the next two or three deliveries from
18 Airbus. So the evidence will show that AMCK was in a unique
19 position among Frontier's lessors.

20 Now, AMCK did not reject this rent deferral request
21 out of hand. They began a negotiation with Frontier over the
22 request. And in exchange for the rent deferral requested by
23 Frontier, AMCK asked for some concessions of its own. They
24 referred to these as quid pro quos, or you might see QPQ. One
25 concession that AMCK wanted, they wanted Frontier to defer

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1 AMCK's financing obligations under the Framework Agreement for
2 six months. And Frontier could arrange that by negotiating
3 with Airbus to delay the upcoming deliveries.

4 But you are going to hear that there were a number of
5 other concessions requested by AMCK, one was emphasized by
6 Mr. Hosenbud, and had to do with lease extensions. But there
7 were a number of concessions that bubbled up during the course
8 of this negotiation.

9 And the negotiations over all these possible
10 concessions, they're really all set forth in the documentary
11 record. The parties exchanged proposals and counterproposals
12 by e-mail throughout the month of April. But the parties never
13 reached an overall agreement with respect to both rent deferral
14 and concessions under the Framework Agreement.

15 The parties did reach agreement on one thing.
16 Frontier had two lease payments due on April 6, 2020, and
17 Frontier asked for a short-term deferral of those payments in
18 order to negotiate with Airbus over delivery delays. And this
19 was discussed on a telephone call involving Robert Fanning from
20 Frontier and Paul Sheridan, the CEO of AMCK, on April 6.

21 And Mr. Sheridan agreed to a 10-business-day grace
22 period ending on April 21, 2020. This is set forth in a
23 confirming e-mail that Mr. Sheridan sent shortly after that
24 call.

25 The next day, April 7, is a critical day in this case.

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1 On that day there was a telephone call between James Dempsey,
2 the CFO of Frontier, and Mr. Sheridan, as I said, the CEO of
3 AMCK, and one thing is certain about that call. They discussed
4 a month-to-month rent deferral arrangement.

5 You're going to hear conflicting evidence, however,
6 about whether any agreement was reached on that call. And
7 you're also going to hear conflicting evidence about what a
8 month-to-month deferral might mean.

9 Obviously the key witnesses on these issues are
10 Mr. Dempsey and Mr. Sheridan. They were the only two people on
11 that April 7 call. Now, unfortunately, neither of them
12 remembers exactly what was said on the call, and each left the
13 call with a different impression of what had been discussed.

14 Happily, there are written communications on each side
15 from shortly after the call that shed some light on what
16 happened.

17 On the Frontier side, immediately after the call,
18 Mr. Dempsey exchanged text messages with his colleague Robert
19 Fanning about the supposed month-to-month agreement, and
20 Mr. Hosenbud showed you one of those text messages. But there
21 are other text messages on the same day that we think are even
22 more revealing.

23 For example, they indicate that Mr. Dempsey was still
24 expecting the arrangement to be documented in a written
25 agreement. The text exchange also confirmed that at least one

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1 of the key terms of rent deferral -- the repayment period --
2 had not been discussed at all on the telephone call.

3 On the AMCK side, Mr. Sheridan sent an e-mail to
4 AMCK's shareholder describing the month-to-month discussion,
5 and Mr. Sheridan described it as a deferral of rent for the
6 rest of April, and he also described it at that time as
7 something AMCK can agree to. Not something that AMCK had
8 already agreed to. And consistent with this, on April 9, 2020,
9 two days later, AMCK sent Frontier a draft agreement proposing
10 to defer rent for the month of April, so consistent with
11 Mr. Sheridan's understanding of that call.

12 And now here's one of the enduring mysteries of this
13 case, your Honor. Frontier never responded to that draft
14 agreement. They never agreed to it. And they never wrote back
15 to propose any alternative terms for the rent deferral. The
16 matter of rent deferral for the month of April was simply
17 dropped by Frontier.

18 Although there was no written agreement in place for
19 rent deferral for the rest of April, Frontier did not make any
20 payment when that 10-day grace period expired on April 21. The
21 evidence will show that Frontier did not pay rent due in April
22 for 14 of the aircraft it leased from AMCK, and it also failed
23 to make a couple of rent payments that were due in early May.

24 AMCK did not take immediate action on these payment
25 defaults. Instead, AMCK continued to negotiate with Frontier

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1 in an attempt to reach an overall agreement. And you will see
2 that the parties continued to exchange proposals on rent
3 deferral and on other concessions through the end of April and
4 into early May.

5 By early May, however, it was clear to AMCK that the
6 parties were not going to reach an overall agreement. On
7 May 8, 2020, AMCK sent a notice to Frontier that it was
8 terminating the Framework Agreement, based on Frontier's
9 payment defaults in April.

10 Now, AMCK terminated the Framework Agreement, but it
11 did not terminate the 14 leases with Frontier, the 14 leases
12 that were in default as of that time. So, accordingly,
13 Frontier changed course, and they decided to pay all the past
14 due rent to avoid being in default under those leases. And on
15 May 13, 2020, Frontier did pay just over 5.8 million in past
16 due rent on those lease agreements.

17 Your Honor, you've now heard a summary of the
18 important facts from each side. And you might notice that
19 there is really not that much disagreement between the parties
20 on the relevant chronology of events. Mr. Hosenbud talked
21 about most of the same dates that I told you about.

22 This case really boils down to one disputed fact.
23 What happened on that telephone call on April 7 between
24 Mr. Dempsey and Mr. Sheridan. And during this trial, you are
25 going to hear what each of those individuals had to say about

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1 that telephone call. Mr. Dempsey is here today, I assume
2 you'll hear from him later this week to hear his side of the
3 story. Mr. Sheridan is traveling from Dublin, Ireland, at the
4 end of this week, and he will be available to tell you his side
5 of the story on Monday, Tuesday next week.

6 The testimony from those two witnesses will be the key
7 to this case. And after hearing that testimony, it will be up
8 to your Honor to decide whether that telephone call resulted in
9 any agreement or express waiver with respect to rent deferral.

10 Thank you very much, your Honor.

11 THE COURT: Thank you, gentlemen.

12 MR. SCHAER: Your Honor, we'd like to call our first
13 witness. That's Spencer Thwaytes from Frontier.

14 Your Honor, we have a handful of exhibits to go
15 through with Mr. Thwaytes, many of them have been agreed to by
16 the parties. Is it best to move to admit the batch right now
17 or should we do that as we go through each exhibit?

18 THE COURT: I think probably right now do them all.

19 MR. SCHAER: Can you please bring up the page that
20 shows all the different exhibit numbers.

21 So we would move to admit Joint Exhibits 1, 2, 3, 4,
22 5, 19, 22, 24, 25, 26, 28, 29, 36, 48, 51, 56, 60, 73, 81, 91,
23 95, 111, 120, 134, 142, 146, 148, 156, 157, 163 and 190.

24 THE COURT: Received.

25 (Joint Exhibits 1, 2, 3, 4, 5, 19, 22, 24, 25, 26, 28,

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Thwaytes - Direct

29, 36, 48, 51, 56, 60, 73, 81, 91, 95, 111, 120, 134, 142,
146, 148, 156, 157, 163, 190 received in evidence)

MR. BUTLER: Your Honor, I want to address -- pardon
me -- as long as they're joint trial exhibits, and think I
those are the only ones you mentioned, we have no objection of
course to entering them into evidence.

MR. SCHAER: Yes. There is a Defense Exhibit 1 we'll
lay the foundation for because it hasn't been jointly
stipulated unless it's okay to --

MR. BUTLER: Thank you.

MR. SCHAER: Okay.

SPENCER THWAYTES,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHAER:

Q. Good morning, Mr. Thwaytes. Where do you work currently?

A. Aircraft Finance Germany.

Q. What's your role at Aircraft Finance Germany?

A. Chief revenue officer and head of North America.

Q. How long have you been in that role?

A. About nine months.

Q. Where were you working before then?

A. Frontier Airlines.

Q. How long you did you work at Frontier?

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Thwaytes - Direct

1 A. About seven and a half years.

2 Q. What was your position at Frontier when you left?

3 A. I was the vice president and treasurer.

4 Q. What was your position at Frontier in March of 2020?

5 A. Same position.

6 Q. Why did you leave Frontier?

7 A. I wanted to move to Italy.

8 Q. Is that where you live currently?

9 A. Yes.

10 Q. Did you have any jobs in the airline industry before
11 working at Frontier?

12 A. No, not directly in the airline industry.

13 Q. Where were you working before Frontier?

14 A. Bank of America Merrill Lynch.

15 Q. Can you just tell us briefly about your education. Did you
16 attend university?

17 A. Yes, I have an associate's degree in accounting from
18 BYU-Idaho, and a bachelor's degree in accounting from
19 University of Florida, and a master's in business
20 administration from Columbia Business School.

21 Q. Right here in New York.

22 Going back to when you were at Frontier and the vice
23 president. What were your responsibilities in that role?

24 A. When I left or in March of 2020?

25 Q. Thank you. In March of 2020.

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Thwaytes - Direct

1 A. I was responsible for the treasury department, the fleet
2 department, and the strategic sourcing procurement departments.

3 Q. Can you tell us about the treasury department. What is
4 that department did and your role in being responsible for it?

5 A. The department was responsible for administering all of the
6 cash receipts and expenditures and investing excess liquidity,
7 risk management, including structuring, buying derivatives,
8 managing the corporate insurance policies, financing the
9 business, outside of operating leases with lessors. Generally
10 those were the things, and I was responsible for overseeing a
11 team of people that administered those responsibilities.

12 Q. How about can you do the same with the fleet department;
13 what does it do and what was your role in overseeing it?

14 A. The fleet department primarily was responsible for managing
15 the relationship with the OEMs that we purchased aircraft from,
16 and the engine manufacturing as well. Also the lessors that we
17 leased did sale leaseback transactions with and leased aircraft
18 with. And then in addition, inducting aircraft and returning
19 aircraft, there was some involvement in those matters and some
20 other matters that are less general than that.

21 Q. And you're responsible for overseeing that?

22 A. Overseeing that. There was a team of people that reported
23 up to me that would administer it.

24 Q. Can you just quickly tell us about strategic sourcing, that
25 department as well?

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Thwaytes - Direct

1 A. That department is responsible for negotiating contracts
2 across the business and all the different departments of the
3 business. IT contracts, operating contracts, and the flight
4 ops department, maintenance contracts, HR contracts. Just
5 contracts across the rest of the business outside of fleet
6 particularly.

7 Q. Thank you. So, let's turn now to how Frontier acquires the
8 aircraft it uses in its operations.

9 Now, I'll say as a headliner this involves a number of
10 complicated contracts, so we'll try to keep this as narrow and
11 brief and hopefully as interesting as possible.

12 Does Frontier own the airplanes that it uses in its
13 day-to-day operations?

14 A. No.

15 Q. So I want you to walk us through the process of how
16 Frontier acquires the airplanes that it uses in its operations.
17 What is the first step in the process of acquiring an airplane
18 for Frontier?

19 A. First step is negotiating an agreement with an aircraft
20 manufacturer such as Airbus, Boeing, for example, to acquire
21 the aircraft that they manufacture.

22 Q. And how long, what is the span of time that a contract like
23 this generally would cover?

24 A. Aircraft in these contracts deliver out over extended
25 periods of time, could be up to 10 years in some cases, more or

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Thwaytes - Direct

1 less from the date of agreement.

2 Q. And when you were at Frontier, did Frontier work with a
3 particular airplane manufacturer?

4 A. Yes.

5 Q. Which manufacturer was that?

6 A. Airbus.

7 Q. Did Frontier work with any other manufacturers while you
8 were at Frontier?

9 A. Frontier didn't not buy aircraft from any other aircraft
10 manufacturers.

11 Q. Thank you for clarifying my question.

12 I want to bring up what's been premarked as Joint
13 Exhibit 190.

14 What is this document?

15 A. This is the aircraft purchase agreement between Airbus and
16 Republic Airways Holdings.

17 Q. Who is Republic Airways Holdings?

18 A. It is a predecessor owner of Frontier Airlines.

19 Q. Did Frontier step into this contract at some point or take
20 over this contract from Republic Airways Holdings?

21 A. Yes, in some manner, yes.

22 Q. I want to take us down to page 29 of this exhibit. We're
23 in section 9.

24 What is this section showing?

25 A. It is the schedule of aircraft that Airbus has agreed to

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1 sell and Frontier's agreed to purchase, including the aircraft
2 rank, which is a way to identify the aircraft individually, and
3 then the scheduled delivery period, including the year and
4 quarter.

5 Q. Why is it done in quarters?

6 A. Because at the time that this agreement was signed, Airbus,
7 looking into the future of their manufacturing system, could
8 only predict the year and the quarter that the aircraft would
9 be delivered.

10 Q. I am going to scroll down in what looks like that same
11 chart so we can see the unredacted period.

12 Can you tell us how many aircraft were part of this
13 contract that we're looking at right now?

14 A. At the time that this contract was signed that we're
15 looking at here, 80 aircraft.

16 Q. Is this contract ever amended?

17 A. Yes.

18 Q. Are new aircraft added through the amendments?

19 A. Yes.

20 Q. How many aircraft were part of this contract through the
21 amendments at the time that you left Frontier?

22 A. 200ish.

23 Q. Okay. Let's walk through the process for a single
24 airplane.

25 What are the main cash flows involved between Frontier

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Thwaytes - Direct

1 and Airbus in the purchase of a single aircraft?

2 A. When you agree to purchase the aircraft, you agree to pay
3 predelivery payments to Airbus. And there is a schedule of
4 when those payments are due, relative to when you sign the
5 agreement, and the expected delivery date or quarter. And then
6 the percentage of a price that you will pay in each of those
7 PDP payments. So you are required to make those predelivery
8 payments to them.

9 And then when the aircraft are delivered, you pay the
10 balance of the purchase price to them.

11 Q. Are these amounts agreed to between Frontier and Airbus?

12 A. Yes.

13 Q. I want to look at this section here. What is section 5.33
14 showing us?

15 A. The schedule of predelivery payments.

16 Q. When is the final predelivery payment due, according to
17 this contract?

18 A. 12 months before the scheduled delivery month of each
19 aircraft.

20 Q. Where does Frontier get the money to make these predelivery
21 payments?

22 A. It is a combination of cash equity from the company's
23 balance sheet and from a credit facility with a bank.

24 Q. What's the percentage, what's the percentage that comes
25 from Frontier's cash and what's the percentage that comes from

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Thwaytes - Direct

1 the bank?

2 A. 90 percent financing, 10 percent bank, somewhere in that
3 range.

4 Q. So 90 percent financing and you said 10 percent bank?

5 A. I'm sorry. 10 percent from the cash equity of the business
6 and 90 percent from the bank, in that range.

7 Q. Is Frontier paying interest on the amount of the PDPs that
8 it's taking from the bank?

9 A. Yes.

10 Q. That's the PDPs. When is the purchase price due on the
11 aircraft?

12 A. On the delivery date.

13 Q. I want to look at this section here. Can you explain what
14 this section 5.4 is telling us?

15 A. It is saying when the payment for the aircraft needs to
16 occur, including the predelivery payments and the balance of
17 the final price.

18 Q. So, we got the predelivery payments, the purchase price,
19 that's at the delivery of the aircraft. Is that the end for
20 Frontier of the airplane acquisition process?

21 A. It is the end of the process of acquiring the aircraft from
22 Airbus.

23 Q. Is there another part of the process for Frontier?

24 A. Simultaneously at delivery, Frontier enters into a sale and
25 leaseback transaction with a lessor.

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1 Q. What is a sale and -- we'll try to go through it slowly.

2 What is a sale leaseback agreement?

3 A. It is an agreement where Frontier sells an aircraft to a
4 lessor and simultaneously agrees to lease the aircraft back
5 from the lessor over a period of time.

6 Q. About how long before Frontier enters into a sale leaseback
7 agreement with the lessor is Frontier I guess contemplating or
8 working on the process for that particular aircraft?

9 A. Typically Frontier would issue an RFP to finance the
10 aircraft 12 to 18 months in advance of the aircraft delivery.

11 Q. What is an RFP?

12 A. A request for a proposal.

13 Q. Who is Frontier sending this RFP to?

14 A. To aircraft leasing companies.

15 Q. About how many aircraft leasing companies?

16 A. 25, 30. It fluctuates, but in that range.

17 Q. So Frontier sends RFP to 25, 30 aircraft leasing companies,
18 and then what happens next?

19 A. Those aircraft leasing companies provide proposals to
20 Frontier that have different terms in them, and Frontier
21 evaluates the proposals, negotiates with them, and determines
22 the optimal leasing company to select, based off of the terms
23 of the proposals and experience with the lessors, credibility
24 in the marketplace.

25 Q. When Frontier selects the lessor through that RFP process

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1 to use, is there any type of agreement that's reached to kind
2 of solidify that?

3 A. Yes, a letter of intent is agreed.

4 Q. About how far before the airplane actually delivers is a
5 letter of intent generally agreed to?

6 A. At the end of the RFP process, soon after that. So, 12, 9,
7 12 months before an aircraft delivers.

8 Q. Does Frontier do its sale leaseback agreements on a one-off
9 or airplane-by-airplane basis?

10 A. Each aircraft has an individual lease agreement. But,
11 Frontier would typically agree to do a sale leaseback agreement
12 for multiple aircraft in each go.

13 Q. And is there a particular term for the agreement to do
14 multiple aircraft in a single go?

15 A. A Framework Agreement.

16 Q. What are some of the main -- and under this Framework
17 Agreement, is that the only agreement there is when the
18 aircraft deliver with the leasing companies or are there other
19 agreements that come later?

20 A. There is other agreements that come later.

21 Q. What are some of those agreements?

22 A. There is a lease agreement, there's a guarantor agreement,
23 there is a trust agreement.

24 Q. What are some of the main pricing terms or commercial terms
25 that are included in the sale leaseback arrangement between

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Thwaytes - Direct

1 Frontier and the aircraft leasing companies?

2 A. The sales price, the monthly rental amount that's paid,
3 adjustment factors to the monthly rent, and some end-of-lease
4 adjustment rates for utilization on the aircraft.

5 Q. When you say sales price, can you explain what is that
6 price and who is paying whom?

7 A. It is the price that the lessor acquires from the aircraft
8 from Frontier for.

9 Q. When you say monthly rent payments, can you explain what
10 that is and who is paying who?

11 A. That's the monthly amount that Frontier pays the lessor
12 every month during the term of the lease to lease the aircraft
13 from them.

14 Q. So, back to the process itself. How does this process
15 work, the sale leaseback process work, at the time that Airbus
16 completes the manufacture of the plane and that plane is ready
17 for delivery?

18 A. A couple days prior to the aircraft delivery, some
19 calculations are done to determine what the final price of the
20 aircraft will be with Airbus. At the same time, some
21 calculations are done to determine what the final lease rate
22 will be or monthly lease amount will be to the lessor.

23 Frontier pays off the loan with the bank, the PDP loan, in
24 order to have no lien on the aircraft. And then on the
25 delivery date, the purchase price is paid from the lessor into

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Thwaytes - Direct

1 kind of an escrow situation that then is used to pay the
2 balance of the amount due to Airbus, with the difference
3 between the amount due to Airbus and the price that the lessor
4 is paying Frontier for the aircraft being retained by Frontier,
5 and transfer -- title transfers to the lessor, a lease
6 agreement is in place between the lessor and Frontier.

7 Q. So a lot is going on there.

8 A. A lot goes on.

9 Q. Does Frontier make a profit when these airplanes deliver?

10 THE COURT: Do most of those latter prices adhere
11 pretty closely to the figures that were forecast before? Or
12 are there major changes?

13 THE WITNESS: Well, they're affected by interest rates
14 in some circumstances. The monthly rent paid to the lessor is
15 affected by changes in interest rates. And then the final
16 purchase price to Airbus is impacted by escalation factors.
17 Escalation factors. So, potentially a CPI index will have to
18 be calculated to determine what the -- the escalation of
19 certain parts of how you determine the final purchase price,
20 including credits and different things.

21 THE COURT: Thank you.

22 THE WITNESS: You're welcome.

23 Q. Does Frontier make a profit when these airplanes deliver
24 from Airbus and go through this transfer of title in the sale
25 leaseback process?

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Thwaytes - Direct

1 A. Oh, yeah.

2 Q. How so?

3 A. Frontier buys these aircraft in bulk from Airbus. So,
4 agrees to buy a significant amount of aircraft that will be
5 delivering over an extended period of time, so makes a big
6 commitment to Airbus. And that results in a -- a lower price
7 than the market price per aircraft. And then lessor agrees to
8 purchase a number of aircraft from Frontier that's
9 significantly lower than the amount of aircraft that Frontier
10 is buying and in a short period of time, and pays a market
11 price for the aircraft.

12 Q. I know Frontier's commercial and financial terms with
13 Airbus are highly confidential. But can you approximately tell
14 us how much profit Frontier makes from this difference in
15 purchase price that it owes to Airbus and that the lessor owes
16 to Frontier?

17 A. It is confidential, but I can say it's in the millions of
18 dollars.

19 Q. Are there other financial benefits to Frontier when an
20 airplane delivers?

21 A. The many financial benefits to Frontier are the cash inflow
22 from the difference between the purchase price from Airbus and
23 the sales price to the lessor, the pay down of the PDP facility
24 to reduce the company's debt, also the receipt of the cash
25 equity that the company has put into the PDPs, and then not

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Thwaytes - Direct

1 paying interest on outstandings under the debt as well.

2 Q. Is it fair to say that Frontier wants these planes to
3 deliver when they are ready?

4 A. Definitely.

5 Q. So, the main events in this case, as we heard, are March of
6 2020, but I'd like to go over Frontier's relationship with AMCK
7 prior to that date and get ourselves a bit acquainted with some
8 of these aircraft sale and leaseback documents.

9 In March of 2020, who was Frontier's largest aircraft
10 leasing company partner?

11 A. AMCK.

12 Q. Do you know in March of 2020, at the beginning of it or
13 prior to March of 2020, how many aircraft Frontier was leasing
14 with AMCK?

15 A. I believe 14.

16 Q. I am pulling up now what's been previously marked Joint
17 Exhibit No. 1. What is this document?

18 A. It is a Framework Agreement between Accipiter Holdings and
19 Frontier Airlines relating to Accipiter purchasing a number of
20 aircraft from Frontier Airlines and doing a leaseback after
21 purchasing them.

22 Q. Who is Accipiter Holdings?

23 A. An entity affiliated with AMCK.

24 Q. Are Airbus model 320-251N, are those referred to by any
25 other name?

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Thwaytes - Direct

1 A. 320neos.

2 Q. Can you please read the date of this agreement on page 3.

3 A. 29th day of May, 2018.

4 Q. I want to take us down to page 40. This is schedule 1 on
5 this document. What is this?

6 A. This is a schedule of aircraft that are contemplated in
7 this agreement.

8 Q. How many aircraft are here?

9 A. 11.

10 Q. What does this rank number refer to?

11 A. That refers to the rank number in the Airbus purchase
12 agreement between Frontier Airlines and Airbus. It is a way to
13 identify the aircraft individually.

14 Q. And what's in this column all the way over to the right
15 here?

16 A. That column shows the period when the aircraft are
17 scheduled to be delivered, whether it's months or quarters,
18 depending on how soon they're going to be delivered.

19 Q. Let's go down to schedule 3 on page 45. What is this
20 showing us?

21 A. This is the purchase price that Accipiter's agreed to
22 purchase the aircraft from Frontier for in the respective years
23 2018 and 2019.

24 Q. What is that price in 2018?

25 A. 49 million.

O483FRO1

Thwaytes - Direct

1 Q. And how about 2019?

2 A. 50 million.

3 Q. Now we're on page 4. What is this definition telling us?

4 A. That's the base fixed rental for the aircraft. So the
5 amount that Frontier will pay to Accipiter before the
6 adjustment factor contemplates the final rent in years 2018 and
7 2019.

8 Q. So is this the exact amount that Frontier will pay in
9 monthly rent for 2018 aircraft?

10 A. It could be, but it could not be, depending on the
11 adjustment of the rent before delivery.

12 Q. Let's go down to section 4.1 on page 19. What is this
13 showing us here?

14 A. This is the formula to adjust the rent prior to the
15 delivery.

16 Q. Can you please read this line here, I've highlighted two,
17 but I meant to highlight this one here.

18 A. So (b) is the assumed base swap rate of 1.00 percent.

19 Q. And what does the assumed base swap rate represent?

20 A. It represents the cost of capital for the lessor in this
21 period of time.

22 Q. This is 1 percent, correct?

23 A. 1 percent.

24 Q. I want to introduce now what's been previously marked as
25 Joint Exhibit 2. What is this document?

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Thwaytes - Direct

1 A. It is an aircraft lease agreement between Wells Fargo Trust
2 Company and Frontier Airlines.

3 Q. Is this one of -- let me bring you down to here. What is
4 the date of this agreement?

5 A. 30th day of August, 2018.

6 Q. Now bring you down to the definitions. What does this show
7 us here?

8 A. AHDAC, an acronym meaning Accipiter Holdings DAC.

9 Q. Is that the same entity that entered the Framework
10 Agreement that we just looked at?

11 A. I don't recall exactly, but Accipiter was the name that was
12 on the Framework Agreement. Just not recalling if it was
13 exactly the same after.

14 Q. What is your understanding about whether this lease -- if
15 this lease agreement relates to that Framework Agreement we
16 just looked at?

17 A. That it does.

18 Q. This is one of the leases that --

19 A. This is one of the leases for one of the aircraft
20 contemplated in the Framework Agreement.

21 Q. What is the manufacturer's serial number or the MSN?

22 A. It is a unique identifier for the aircraft, for each
23 aircraft.

24 Q. What number are we looking at here?

25 A. 8402.

O483FRO1

Thwaytes - Direct

1 Q. Why is this agreement between Wells Fargo and Frontier?

2 A. Typically, a lessor has the -- each aircraft in a trust
3 that it then owns for some reasons. And Wells Fargo Trust
4 Company is one of the common companies that provide these
5 trusts to lessors to facilitate these transactions.

6 Q. Under this agreement, who is the lessor?

7 A. Wells Fargo Trust Company.

8 Q. Who is the lessee?

9 A. Frontier Airlines.

10 Q. A few more definitions.

11 Under this agreement, who is the lessor guarantor?

12 A. AHDAC.

13 Q. And then how about the owner participant?

14 A. Accipiter Investments Aircraft 4 Limited.

15 Q. Let's look at some of the provisions that are within this
16 lease agreement.

17 What is provision 6.1 relating to?

18 A. Are you asking 6.1 in total or sub bullet (a)?

19 Q. Thank you. 6.1(a).

20 A. It is the basic rent. So the basic rent is the monthly
21 rent that Frontier will pay to the lessor.

22 Q. Does this direct us anywhere to see the exact amount?

23 A. Schedule 6.

24 Q. And let's go down to Schedule 6.

25 What is the basic rent?

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Thwaytes - Direct

1 A. \$343,181.29 U.S.

2 Q. And what is that amount representing?

3 A. It's the monthly rent that Frontier as lessee will pay to
4 Wells Fargo as lessor over the life of the lease.

5 Q. How is this amount, this \$343,181.29 amount arrived at?

6 A. You take the rent agreed through the RFP process that is
7 translated into the LOI and then into the Framework Agreement.
8 And number of days prior to the delivery, you use the formula
9 that we looked at previously to compare the indicative swap
10 rate that is in the Framework Agreement to the same indicative
11 swap rate a couple of days before the aircraft is delivered,
12 and that couple of days is stipulated how many days in the
13 Framework Agreement. And you take that difference and you
14 multiply that difference by an adjustment factor, and that will
15 either increase or decrease the basic rent from the initially
16 agreed rent in the RFP LOI -- that's in the LOI and in the
17 Framework Agreement.

18 Q. Just to hopefully make it clearer. Because we were just
19 dealing with the 2018 aircraft. Is this that base fixed rental
20 that was agreed to in the Framework Agreement?

21 A. Yes.

22 Q. And what we just saw, that was the adjustment to that based
23 on the calculation you were telling us?

24 A. Correct.

25 Q. What is this paragraph saying?

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Thwaytes - Direct

1 A. The date that the lease payments are due.

2 Q. And can you explain to us how that's determined? Are all
3 payments due on the first of every month?

4 A. It's relative to the date that the aircraft delivers and
5 the sale leaseback agreements are executed.

6 Q. So let's say something is delivered on April 8 to use today
7 as an example. When would those lease payments be due moving
8 forward?

9 A. April 8, as long as they fall on a business day.

10 Q. Well, would it always be due on April 8 moving forward?

11 A. No. If April 8 is on a weekend, then there is a way to
12 manage that to either pay it the day prior or day after the
13 weekend.

14 Q. And what does this tell us happens if a payment is due on
15 the weekend?

16 A. That it's due the immediately preceding business day.

17 Q. I think I was asking my prior question a couple ago not as
18 clearly as I should have, so my apologies.

19 When would the payment be due in the following months
20 if something were to deliver on April 8, so when would the
21 payment be due in May?

22 A. May 8.

23 Q. And then in June?

24 A. June 8.

25 Q. Unless it fell on a holiday or weekend?

O483FRO1

Thwaytes - Direct

1 A. That's right.

2 Q. What is a grace period as it relates to these aircraft
3 leasing agreements?

4 A. It is a period of days after the basic rent payment date
5 that the lessee is able to make the payment and not be deemed
6 late in making the payment.

7 Q. Does this lease agreement, to your understanding, contain a
8 grace period?

9 A. Yes.

10 Q. And what is that grace period?

11 A. Three days.

12 Q. So can you just explain if a lessee, Frontier, doesn't pay
13 on the payment date, but pays before the grace period expires,
14 can you explain what happens in that circumstance?

15 A. Nothing.

16 Q. Why is that?

17 A. Because it's considered on time.

18 Q. Up to March 2020, which is the time period we're talking
19 about here, had Frontier made all of its payments on time to
20 AMCK or at least within that three-day grace period of a
21 payment due date?

22 A. I believe so.

23 Q. I'm bringing up what's been previously marked as Joint
24 Exhibit 3. What is this document, Mr. Thwaytes?

25 A. The trust agreement between Accipiter Investments Aircraft

O483FRO1

Thwaytes - Direct

1 4 Limited and Wells Fargo Trust Company.

2 Q. And what date is this agreement executed on?

3 A. August 30, 2018.

4 Q. Is that the same date as the lease agreement is executed?

5 A. It should be.

6 Q. Let's confirm. Is it the same dates as the lease agreement
7 was executed?

8 A. Same day.

9 Q. Do you know what the purpose of a document like this is?

10 A. It is an agreement between the trust company that owns the
11 aircraft and the lessor.

12 Q. Who is the trustor in this agreement?

13 A. Accipiter Investments Aircraft 4 Limited.

14 Q. And who is the trustee?

15 A. Wells Fargo Trust Company.

16 Q. I should have made clear. What does this 8402 refer to?

17 A. I believe that's the MSN for the aircraft.

18 Q. Is that the same MSN that we saw in the lease agreement we
19 just looked at?

20 A. Yes.

21 Q. Could a sale leaseback transaction, at least as it is used
22 with Frontier, could that have gone through without this
23 document being executed?

24 A. Frontier wouldn't have agreed to it going through without
25 this document executed.

O483FRO1

Thwaytes - Direct

1 Q. I'm bringing up now what's been previously marked as Joint
2 Exhibit 4.

3 What is this document?

4 A. It is a guaranty between Accipiter Holdings DAC and
5 Frontier Airlines.

6 Q. And what MSN or aircraft does this relate to?

7 A. Again 8402.

8 Q. And what date was this executed on?

9 A. August 30, 2018.

10 Q. Is that the same date as the other two documents that we
11 just saw?

12 A. Yes.

13 Q. Who is the guarantor in this agreement?

14 A. Accipiter Holdings DAC.

15 Q. And who is the beneficiary?

16 A. Frontier Airlines.

17 Q. I want to go down to section 1 here. I'm sorry to ask you
18 to do this, but can you please read the two sentences that I
19 have highlighted here.

20 A. "From and after the date of this guaranty, guarantor hereby
21 irrevocably and unconditionally guarantees the due and punctual
22 payment and performance of all of the obligations of lessor
23 under the lease, in each case after any applicable notice
24 requirements in accordance with the lease, such obligations of
25 lessor being referred to herein as the guaranteed obligations.

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Thwaytes - Direct

1 If lessor fails to perform or comply with any such guaranteed
2 obligations in accordance with the lease, then guarantor hereby
3 agrees to pay, perform, or cause to be paid and/or performed,
4 on demand, such guaranteed obligations to the same extent as if
5 it were the primary obligor."

6 Q. Could the sale leaseback transaction we've just been
7 looking at for MSN 8402, could that have gone through without
8 this document?

9 A. Frontier wouldn't have agreed for it to go through without
10 this document.

11 Q. Okay. So, to sum up, is it fair to say a lot of things
12 happen when an aircraft delivers?

13 A. Yes.

14 MR. ALEXANDER: Object to the leading question, your
15 Honor.

16 MR. SCHAEER: I'm happy to withdraw that question.

17 THE COURT: It's purely epithetical. Overruled.

18 MR. ALEXANDER: Thank you, your Honor.

19 Q. Is it fair to say a lot of things happen all at once when
20 an aircraft delivers?

21 A. Yes.

22 Q. To your understanding, did these documents that we just
23 looked at, do these contain similar material terms as the other
24 13 aircraft that Frontier had on lease with AMCK prior to March
25 of 2020?

O483FRO1

Thwaytes - Direct

1 A. Yes.

2 Q. So, you don't think we need to look at all of the documents
3 related to all of the aircraft?

4 A. No.

5 Q. Thank you.

6 Let's move now into the time period where this case is
7 centered around.

8 I want to first cover, though, what was going on
9 between Frontier and AMCK in that time period between March 16
10 and April 7.

11 Talking about March 16, 2020, 1st. Did anything of
12 note happen on that date between Frontier and AMCK?

13 A. Frontier and AMCK completed a sale and leaseback
14 transaction.

15 Q. Did anything else of note happen on that date between the
16 two parties?

17 A. Frontier sent to AMCK a request for deferral of rent
18 payments and deposit refund.

19 Q. Did anything else happen on that date as well?

20 A. A lot of things were happening on that date.

21 Q. Let me try it this way. That sale and leaseback agreement
22 that happened on March 16, did that relate to any other
23 contract or arise from any other contract?

24 A. It arose from the Framework Agreement.

25 Q. When did that Framework Agreement get executed?

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Thwaytes - Direct

1 A. The Framework Agreement was also executed on that date.

2 Q. Were the terms of that March 16, 2020, Framework Agreement
3 initially agreed to between Frontier and AMCK on March 16,
4 2020?

5 A. They were negotiated before March 16, 2020, and
6 contemplated in an LOI that was executed well in advance.

7 Q. Similar to the process you told us about before with the
8 RFPs?

9 A. Yes.

10 Q. We're going to come back to the Framework Agreement but
11 let's look now to that LOI you just referenced.

12 I'm showing now what's been previously marked as Joint
13 Exhibit 5.

14 What is this document?

15 A. Letter of intent between Accipiter and Frontier for the
16 sale and leaseback of six 320neo aircraft.

17 Q. What is the date of this document?

18 A. 10th of September 2019.

19 Q. So about how far before the Framework Agreement was entered
20 was this letter of intent sent?

21 A. Six months.

22 Q. What does this document contain?

23 A. The material terms of the agreement between the parties to
24 do a sale leaseback transaction on six aircraft.

25 Q. Let's go to page 2. I want to go through some of those

O483FRO1

Thwaytes - Direct

1 terms.

2 In this box number 1 here, what is this referring to?

3 A. It's referring to the six aircraft that are agreed to be
4 sold on leaseback between Accipiter and Frontier, including the
5 months that they would be -- that they were scheduled to
6 deliver, and the aircraft rank to identify each individual
7 aircraft.

8 Q. What does that rank refer to?

9 A. It is a way to reference the aircraft in the purchase
10 agreement between Airbus and Frontier, so it's just a unique
11 identifier for each of the aircraft.

12 Q. So these are the ranks that we saw in that Airbus
13 agreement?

14 A. Correct.

15 Q. I want you to do your best, because we should come back to
16 these, to remember these ranks. Can you just read them out
17 loud?

18 A. Rank 52, rank 53, rank 54, rank 55, rank 58, and rank 59.

19 Q. And can you tell us what are the delivery months of these
20 aircraft?

21 A. March, March, March, May, June, and August.

22 Q. What were the purchase price what would the purchase price
23 be that was agreed to between the parties?

24 A. \$51 million U.S.

25 Q. And how about the lease term?

O483FRO1

Thwaytes - Direct

1 A. 144 months.

2 Q. What is an early termination option?

3 A. It is an option for the lessee, in this case Frontier
4 Airlines, to terminate the lease after 8 years. And that's
5 essentially it.

6 Q. Is an early termination option valuable to Frontier?

7 A. Yes.

8 Q. And why is that?

9 A. It provides Frontier the opportunity to renegotiate the
10 terms of the agreement after 8 years if it wants to continue to
11 operate the aircraft for longer than 8 years. An
12 eight-year-old aircraft should demand a lower lease rate than a
13 brand-new aircraft, for example. It also provides Frontier
14 with flexibility in its fleet to have these aircraft exit its
15 fleet early, if it wants to replace them with other types of
16 aircraft, newer aircraft, different size aircraft.

17 Just provides flexibility in its fleet and in its
18 operation and commercially.

19 Q. This box right here, number 4. What is this -- first, what
20 does box number 4 relate to?

21 A. This relates to the monthly lease payment that's paid
22 between Frontier and Accipiter or from Frontier to Accipiter.

23 Q. What is the base fixed rental agreed to in this agreement
24 or in this letter of intent?

25 A. \$299,880 U.S.

O483FRO1

Thwaytes - Direct

1 Q. Would this amount have been adjusted at the time when an
2 airplane delivers?

3 A. The adjustment formula would have been utilized to see if
4 an adjustment was -- if it would have been adjusted.

5 Q. Is this that adjustment formula?

6 A. Yes.

7 Q. Why did Frontier select AMCK to take on these six aircraft
8 through the RFP process?

9 A. They provided the most optimal terms that we discussed
10 previously that are important. They were our larger lessor.
11 We had a good relationship with them. They had a good standing
12 in the aviation community as a lessor.

13 Q. Let's look now at what has been previously marked Joint
14 Exhibit 24. What is this document?

15 A. This is the Framework Agreement between AMCK and Frontier
16 relating to six 320neo aircraft.

17 Q. Is this the Framework Agreement that arose out of the
18 letter of intent that we just looked at?

19 A. Yes.

20 Q. Just look at a few items to confirm that. Schedule 1 on
21 page 40. What is this showing us?

22 A. This is contemplating the six aircraft that are
23 contemplated in this agreement to be sold on leaseback between
24 the parties.

25 Q. Do the dates we're seeing here match up with the dates we

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Thwaytes - Direct

1 saw in that letter of intent?

2 A. I believe so.

3 Q. Going down one page to schedule 3. What is this showing
4 us?

5 A. This is the price that Frontier Airlines is selling the
6 aircraft to Accipiter for.

7 Q. And how much is that price that was agreed to?

8 A. \$51 million U.S.

9 Q. Does that \$51 million U.S. match what we saw in the letter
10 of intent?

11 A. Yes.

12 Q. I want to take us up to page 4 here. What is this showing
13 us?

14 A. The base fixed rental amount, so this is the base amount of
15 the monthly rent that will be paid between or from Frontier to
16 Accipiter for each of the aircraft.

17 Q. And then going down to page 19. What is on your screen
18 here?

19 A. That's the formula to potentially adjust the basic fixed
20 rent prior to delivery.

21 Q. And does this -- sorry. The prior term we just saw,
22 299,000, does that match what we saw in the letter of intent?

23 A. I believe so.

24 Q. Does this basic rent calculation on the screen here match
25 what we saw in the letter of intent?

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Thwaytes - Direct

1 A. Word by word you'd have to put them next to each other, but
2 generally it looks like it's the same.

3 Q. So that's the Framework Agreement. And one of the other
4 things that you said happened on March 16, 2020, was that an
5 aircraft sale leaseback agreement was entered into. Do I
6 remember that correctly?

7 A. Yes.

8 Q. Do you remember which aircraft delivered on that date, what
9 the MSN number of that aircraft was?

10 A. 8402?

11 Q. We'll go over some documents to get that right. But before
12 we get into the documents though, for the aircraft that
13 delivered on that date, were there any special or unique
14 challenges with that delivery on March 16 of 2020?

15 A. Yes.

16 Q. What were they?

17 A. This aircraft was being delivered right before tariffs were
18 increasing on aircraft delivered outside of the U.S. and being
19 imported into the U.S. And there was a motivation to deliver
20 the aircraft quickly or by a certain period of time in order to
21 avoid having to pay a higher tariff amount.

22 Q. Was this aircraft that was delivered on March 16 being
23 manufactured and delivered from abroad?

24 A. Yes.

25 Q. Where was it being manufactured and delivered from?

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Thwaytes - Direct

1 A. Toulouse, France.

2 Q. What is in Toulouse, France?

3 A. It is the headquarters of Airbus, and a very large
4 manufacturing and assembly site of Airbus build.

5 Q. Were the remaining aircraft under the Framework Agreement,
6 the remaining five, set to also be delivered from Toulouse?

7 A. No.

8 Q. Where were they set to be delivered from?

9 A. Mobile, Alabama.

10 Q. Is there any difference between Airbus's facility in
11 Toulouse, France, and their facility in Mobile, Alabama?

12 A. Yes.

13 Q. What is that difference?

14 A. It's significantly different. In Mobile, Alabama, it is
15 just a final assembly facility. Where aircraft arrive
16 partially assembled and the assembly process is completed and
17 then delivered. There is not a lot of back shop capabilities
18 and engineering and all. Where, in Toulouse, Airbus has every
19 capability they have available, and a very large facility, and
20 many, many aircraft. It's just completely different.

21 Q. So, much larger in Toulouse?

22 A. Larger and more complex in Toulouse, and much simpler and
23 smaller in Alabama.

24 Q. How did the storage capabilities compare between the two
25 facilities?

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Thwaytes - Direct

1 A. Many more aircraft in Toulouse parked, waiting delivery or
2 something than in Mobile.

3 Q. We saw earlier in the Airbus agreement that planes are
4 provided a quarter in which they'll deliver, and then we saw
5 months of deliveries in the Framework Agreement.

6 Do you know how long before a plane actually delivers
7 is Frontier provided with the expected date of delivery?

8 A. 45 days in advance.

9 Q. Who determines the exact date of deliveries; is that
10 Frontier determines the date of delivery?

11 A. Airbus.

12 Q. When Frontier learns the date of the delivery, does it
13 inform its aircraft leasing partners about that date?

14 A. Yes.

15 Q. Does it do that in short order after it learns that date?

16 A. Typically.

17 Q. Going to show now what has been previously marked as Joint
18 Exhibit 22.

19 What is the date and time of this e-mail?

20 A. March 16, 2020, at 6:59:57 a.m.

21 Q. Who is Jane O'Callaghan?

22 A. She was the chief commercial officer of AMCK.

23 Q. If we look down here, what is Jane saying to the Frontier
24 team?

25 A. "Congratulations on completing the delivery and the sale

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Thwaytes - Direct

1 leaseback."

2 Q. Does this sentence provide any information about the exact
3 MSN number of the plane that delivered on that date?

4 A. Yes.

5 Q. What is that MSN number?

6 A. 10038.

7 Q. Do you know what Ms. O'Callaghan is referring to when she
8 says "Great teamwork across the board over the last three
9 days"?

10 A. All the parties were working feverishly to get the aircraft
11 delivered by this date in order to avoid the increase in the
12 tariffs. I can remember being on the phone in my backyard
13 talking about it with people on the Sunday before.

14 Q. Look at the next document that's been previously marked as
15 Joint Exhibit 29.

16 Mr. Thwaytes, what is the document that is on the
17 screen in front of you?

18 A. A trust -- aircraft lease agreement between UMB Bank as
19 owner trustee and lessor and Frontier Airlines.

20 Q. And what aircraft does this relate to?

21 A. MSN 10038.

22 Q. Is this one of the leases that fell within the March 16,
23 2020, Framework Agreement?

24 A. I believe so.

25 Q. And I believe you said it, but just to make sure, who is

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Thwaytes - Direct

1 the lessor?

2 A. UMB Bank.

3 Q. Who is the lessee?

4 A. Frontier Airlines.

5 Q. And going down a handful of pages. Who is the lessor
6 guarantor? Where does that refer you to?

7 A. The guaranty agreement between Frontier and the lessor
8 guarantor.

9 Q. Can you read what lessor guarantor says on this screen.

10 A. "Owner participant."

11 Q. Let's go down to the owner participant. Who is the owner
12 participant in this lease agreement?

13 A. Vermillion Aviation (Two) Limited.

14 Q. Do you know who Vermillion Aviation (Two) Limited is?

15 A. A entity affiliated with AMCK.

16 Q. Let's look at some of the other terms here, hopefully
17 briefly.

18 We'll go down to schedule 6. What do you see on your
19 screen?

20 A. Schedule 6, basic rent and other terms.

21 Q. What is the basic rent for this aircraft?

22 A. \$269,525.94 U.S.

23 Q. What does that amount refer to?

24 A. That's the monthly rent that Frontier will pay to the
25 lessor.

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Thwaytes - Direct

1 Q. How does that amount relate to the basic fixed rent amount
2 that the parties agreed to in the LOI and the Framework
3 Agreement?

4 A. It's different. It's lower.

5 Q. And how was that amount determined?

6 A. As I explained earlier, via the final rent calculation by
7 comparing the indicative rates between what was agreed in the
8 LOI and the Framework Agreement, and that same rate number of
9 days before the delivery, and then multiplying that by the
10 adjustment factor to come to an amount that you then either
11 increase or decrease the basic rent by or the rent that's in
12 the Framework Agreement by.

13 Q. One more term here. What does security mean?

14 A. The security deposit that Frontier pays to the lessor.

15 Q. Showing you now what's been previously marked as Joint
16 Exhibit 25. What is the document on your screen?

17 A. Trust agreement.

18 Q. And which aircraft does this relate to?

19 A. 10038.

20 Q. Is this document dated the same as the date of the lease
21 agreement?

22 A. Yes.

23 Q. And who is the trustor under this agreement?

24 A. Vermillion Aviation (Two) Limited.

25 Q. Who is the trustee in this agreement?

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Thwaytes - Direct

1 A. UMB Bank.

2 Q. With the exception of the different parties in the prior
3 trust agreement we saw, are the terms in this trust agreement
4 the same as the other trust agreement? Is that your general
5 understanding?

6 A. General understanding.

7 Q. Was this document necessary to complete the sale and
8 leaseback process for MSN 10038?

9 A. Frontier required that this agreement be in place to do so.

10 Q. I want to introduce what's been marked as Joint Exhibit 26.
11 Mr. Thwaytes, what is the document on your screen?

12 A. A guaranty agreement between Vermillion Aviation (Two)
13 Limited and Frontier Airlines.

14 Q. Which airplane does this relate to?

15 A. MSN 10038.

16 Q. Is that the same airplane we've seen with the lease
17 agreement and the trust agreement before this?

18 A. Yes.

19 Q. And what is the date provided for in this document?

20 A. March 16, 2020.

21 Q. Is that the same date that we just saw in the prior two
22 agreements?

23 A. Yes.

24 Q. Who is the guarantor in this agreement?

25 A. Vermillion Aviation (Two) Limited.

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Thwaytes - Direct

1 Q. Who is the beneficiary in this agreement?

2 A. Frontier Airlines.

3 Q. Besides the different parties, is your general
4 understanding that this guaranty is the same as the guaranty
5 that we previously went over?

6 A. Yes, my general understanding.

7 Q. Is this document necessary, was this document necessary to
8 completing the sale and leaseback process for MSN 10038?

9 A. Yes.

10 Q. Okay. I think we are mostly done looking through these
11 complicated contract documents.

12 MR. SCHAER: Your Honor, I note the time is 12:51.
13 This would -- I believe the Court takes a recess at 1. This
14 would be a good stopping point or I'm happy to keep going.

15 THE COURT: Good. We'll resume at 2:15. And we're
16 expecting a short interruption at 3:25, I understand. And
17 probably you can use better this window and the same window in
18 the robing room, which is just through that door, to
19 accommodate more people.

20 Okay. See you at 2:15.

21 MR. HOSENPUD: Thank you, your Honor.

22 MR. BUTLER: Thank you, your Honor.

23 (Recess)

24 (Continued on next page)

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AFTERNOON SESSION

2:15 p.m.

MR. SCHAER: Your Honor, one quick housekeeping issue before we get started. Some of the documents we're going to be going through this afternoon have been marked attorneys eyes only because they contain highly confidential pricing terms. I believe we do have somebody observing today who is not a party to the protective order in this case. How would the Court like to handle those exhibits when they come up?

THE COURT: What are the dates of the prices?

MR. SCHAER: The main ones that we are concerned about, your Honor, are the after -- kind of the dates of the main disputes between the parties and when Frontier's mitigation efforts with other lessors and the competitive bidding price terms to take over the aircraft that would have been part of the Framework Agreement but for the dispute. So it's pricing terms related to parties that are not in this dispute but that do form the basis of the damages calculation in this case.

THE COURT: Is there much confidentiality left if they've been offering that to the other people in the industry?

MR. SCHAER: I do believe that there is confidentiality left because the pricing terms that Frontier has with its lessors it does keep highly confidential even from each other. The exception in this case is with AMCK because

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1 it's a dispute, and it had to be put out there for us to
2 provide the damages we are seeking. But the actual purchase
3 prices Frontier agreed to with other lessors, monthly rent,
4 swap rates, some of the other terms that effect pricing, the
5 maintenance reserves, things like that, that is all highly
6 confidential and competitive amongst the other 25, 30 leasing
7 companies that Frontier engages in those requests for the RFP
8 processes.

9 THE COURT: When was all that going on?

10 MR. SCHAER: This would be June and July of 2020, and
11 then October of 2020.

12 THE COURT: If you wanted confidentiality for that,
13 you should have arbitrated.

14 MR. SCHAER: Understood, your Honor.

15 THE COURT: It's a very strict rule about the public
16 notice. Particularly in this Circuit I think. It may vary in
17 different circuits, but it's very one-sided here, so don't
18 worry about separating the wheat from the chaff.

19 MR. SCHAER: Thank you. We just wanted to make sure
20 we were honoring the NDA's with these other leasing companies,
21 but we understand the Court's order.

22 Q. Good afternoon, Mr. Thwaytes. When we left off, I'll just
23 reorient us. We were just talking --

24 THE COURT: That's right, but you tried. That's
25 important. It wasn't you who let them down. I pushed them

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Thwaytes - Direct

1 down.

2 MR. SCHAER: Your words, your Honor. Thank you.

3 BY MR. SCHAER:

4 Q. Good afternoon, Mr. Thwaytes.

5 Just to reorient us. When we left we were still
6 talking about March 16 of 2020, and you had provided us a
7 number of important items that happened on that day. We talked
8 about the Framework Agreement that Frontier and AMCK entered.
9 We talked about the sale leaseback agreement and all of those
10 contracts for MSN 10038 that the parties entered.

11 Can you tell us about the other noteworthy event that
12 happened between Frontier and AMCK on March 16 of 2020?

13 A. Frontier sent AMCK a deferral request letter.

14 Q. I'm showing you on the screen what has been previously
15 marked as joint exhibit 28.

16 Mr. Thwaytes, what is that I'm showing you on the
17 screen here?

18 A. This is the request letter that we sent to AMCK to defer
19 rents and receive our security deposit back for a period of
20 time.

21 Q. What is the date of this letter?

22 A. March 16, 2020.

23 Q. And scrolling down to page two. Is this your signature?

24 A. Yes.

25 Q. Why did you sign this document?

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Thwaytes - Direct

1 A. I was responsible for making these requests to suppliers
2 across the business at this time. My teams were responsible
3 for managing these requests at this time, so I was the one that
4 was signing these letters.

5 Q. I'm going to scroll up. Can you summarize the main terms
6 that you understand that were the main requests that you were
7 making of AMCK in this letter?

8 A. There's two as you can see. All rent payments due between
9 the date of this letter, which was March 16, 2020, and June 30,
10 2020, will be deferred, and return of one month security
11 deposit.

12 Q. Was Frontier proposing to pay back that rent at some point?

13 A. Yes. As you can see in the next paragraph, Frontier states
14 that it will repay the rent and security deposit over a
15 nine-month period commencing July 1, 2020 with interest.

16 Q. Why did Frontier send this rent deferral request letter to
17 AMCK?

18 A. This was a period of time right when the COVID-19 pandemic
19 crisis was escalating and Frontier was concerned about its
20 liquidity situation so was requesting from many suppliers
21 across the business to defer payments in order to conserve
22 liquidity.

23 Q. Did Frontier send similar letters to any of its other
24 aircraft leasing company partners?

25 A. It sent them to all of them.

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Thwaytes - Direct

1 Q. And when did Frontier send those letters?

2 A. All on March 16.

3 Q. All on the same day?

4 A. Yes.

5 Q. I'm going to bring up what's been previously marked joint
6 exhibit 19.

7 Mr. Thwaytes, is this your phone number?

8 A. Yes.

9 Q. And who is Robert Fanning?

10 A. At the time he was the director of fleet transactions. He
11 worked for me running the fleet department.

12 Q. And do you know whose phone number this is?

13 A. Jimmy Dempsey.

14 Q. Who is Jimmy Dempsey?

15 A. At the time he was the chief financial officer of Frontier.

16 Q. And what is the message that you are sending on this date?

17 A. Could you be more clear with your question?

18 Q. I'll break it into a couple of pieces.

19 Who is Andras?

20 A. Andras is or was a person that worked at Wizz Air and was
21 responsible for their fleet department.

22 Q. What is Wizz Air?

23 A. It's an airline based in Budapest that operates in Europe
24 that we had a relationship with because the owner of Frontier
25 Airlines also had an ownership position in Wizz Air.

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Thwaytes - Direct

1 Q. Who is that shared owner?

2 A. Indigo Partners.

3 Q. And what is this that I've highlighted on the screen that's
4 a part of your message?

5 A. A text message exchange with Andras on WhatsApp.

6 MR. SCHAER: I'm going to put on the screen what's
7 been previously marked as Defense Exhibit One. We hadn't
8 included this in the exhibits that we moved to admit, so I will
9 move to admit this exhibit at this point.

10 MR. ALEXANDER: No objection, your Honor.

11 THE COURT: Received.

12 (Defendant's Exhibit 1 received in evidence)

13 BY MR. SCHAER:

14 Q. Mr. Thwaytes, what is the date that this was sent?

15 A. March 15, 2020.

16 Q. Is that the same date that we just saw in the last exhibit
17 we looked at?

18 A. Yes.

19 Q. Is this FYI from Andras the same message that we just saw?

20 A. Looks like it.

21 Q. I'm going to scroll down to what I believe is a more
22 readable version of that picture that you sent.

23 Are you able to read this version better than the last
24 exhibit?

25 A. Yes.

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Thwaytes - Direct

1 Q. Mr. Thwaytes, which messages on this image, which messages
2 are yours, the one in green on the right or the one in white on
3 the left?

4 A. The ones in green on the right.

5 Q. And how do you know that?

6 A. By looking at WhatsApp, when you have a message exchange
7 where the messages that you type end up.

8 Q. When it's your phone and you are the sender on WhatsApp,
9 where do your messages show up?

10 A. On the right side.

11 Q. And where do the other person you're communicating with,
12 where do their messages show up?

13 A. On the left side.

14 Q. What are you asking Andras in these messages?

15 A. I'm asking him what response he received from lessors to
16 letters requesting rent deferrals.

17 Q. And what is his response?

18 A. That he'd only received one answer from ALC, another
19 leasing company with no agreement.

20 Q. What are you explaining here about where Frontier is in its
21 process of drafting its letter?

22 A. That we were drafting our letter.

23 Q. Will you remind us of the date of this message?

24 A. March 15.

25 Q. Are these messages consistent with your memory about the

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Thwaytes - Direct

1 time that you eventually sent those rent deferral request
2 letters on March 16?

3 A. Yes.

4 Q. Do you remember being asked about these text messages in
5 your deposition?

6 A. Yes.

7 Q. And in your deposition, what was your understanding about
8 which messages originated from you and which messages
9 originated from Andras?

10 MR. ALEXANDER: Your Honor, we object to the use of
11 Mr. Thwaytes' deposition by his own party.

12 THE COURT: Overruled. I want to see where this goes.
13 You may have a valid objection later.

14 MR. ALEXANDER: Thank you, your Honor.

15 Q. I believe the question was in your deposition what was your
16 understanding about which messages originated from you and
17 which messages originated from Andras?

18 A. I was understanding that the messages on the left were from
19 me and on the right from Andras.

20 Q. As you sit here today, do you have a clear understanding
21 about which messages are yours?

22 A. Yes, clear.

23 Q. Which messages are those?

24 A. The ones on the right side.

25 Q. Besides leasing companies, aircraft leasing companies, did

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Thwaytes - Direct

1 Frontier make payment deferral request to anyone else?

2 A. Many other suppliers of the business.

3 Q. Going back to the airline or airplane leasing companies.

4 When you sent these requests on March 16, did any of these
5 leasing companies ever just say no rent deferrals?

6 A. Yes.

7 Q. And when a leasing company said to Frontier no, we are not
8 going to give you a rent deferral, what would Frontier do with
9 its monthly payments to that leasing company?

10 A. It would pay them on time.

11 Q. Can you think of any circumstances where a leasing company
12 said no rent deferral to Frontier and then Frontier did not pay
13 the scheduled monthly lease on time?

14 A. No.

15 Q. Did AMCK ever just say no rent deferrals to Frontier?

16 A. No.

17 Q. Did AMCK respond to this rent deferral request letter at
18 all?

19 A. Yes.

20 Q. And how did they respond to this letter?

21 A. That they were also in a trying situation given the crisis
22 that we were in and they could not agree with it.

23 Q. Did they engage in negotiations?

24 A. Yes.

25 Q. How long did the negotiations with AMCK last for?

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Thwaytes - Direct

1 A. A month and a half.

2 Q. Can you give us through what month or what date
3 approximately?

4 A. Through the beginning of May.

5 Q. Was Frontier paying monthly rent on its airplanes with AMCK
6 while those negotiations were ongoing through the beginning of
7 May?

8 A. On one aircraft.

9 Q. How about on the other 14?

10 A. No.

11 Q. And why is that?

12 A. AMCK requested that we pay rent on one aircraft.

13 Q. And what did they say about the other 14?

14 A. They said that we did not have to pay on those aircraft
15 until we finish negotiating an agreement with Airbus to defer
16 aircraft deliveries and reach an agreement with them on a rent
17 deferral and then sign both of those agreements.

18 Q. Why did negotiations with AMCK stop?

19 A. Because they sent us a termination notice.

20 Q. Do you remember the date that AMCK sent that termination
21 notice?

22 A. May 8th I recall.

23 Q. Prior to Frontier receiving that May 8 termination notice,
24 to your knowledge did AMCK ever ask anyone at Frontier to repay
25 any of the deferred rent?

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Thwaytes - Direct

1 A. They had asked us to pay the deferred rent before the next
2 aircraft delivery multiple times and then asked us to pay it by
3 May 15th. Those were the only times that they asked us to pay
4 back the deferred rent or the timeframes they gave.

5 Q. Did they ever ask you to pay the deferred rent prior to May
6 8th?

7 A. No.

8 Q. I want to briefly go through some of Frontier's and AMCK
9 negotiations to help provide some of the background for this
10 case and testimony moving forward.

11 But before I do, could you please let us know were you
12 the lead negotiator in these negotiations on Frontier's behalf?

13 A. I initially sent the letter and communicated with Jane, and
14 then subsequently Jimmy Dempsey and Robert Fanning took over
15 communicating directly with AMCK and I was not communicating
16 directly with them.

17 Q. And do you know who the lead negotiators were for AMCK?

18 A. Jane O'Callaghan and Paul Sheridan.

19 Q. Were you kept up-to-date on the status of these
20 negotiations?

21 A. Generally.

22 Q. And how so?

23 A. In meetings that we would have as leadership team by being
24 CC'd on emails and by receiving text messages.

25 Q. Were you being kept up-to-date in the normal course of your

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Thwaytes - Direct

1 work?

2 A. Yes.

3 Q. Is it part of your duties to stay informed on these types
4 of topics such as rent deferral, when to pay rent?

5 A. Yes, I need to stay inform so I know if there's actions
6 that my team need to take.

7 Q. I'm showing now what's been previously marked as joint
8 exhibit 36. Do you recognize this email?

9 A. Yes.

10 Q. What is this email?

11 A. It's Jane O'Callaghan's response to the request letter that
12 we sent to her.

13 Q. Who is she sending this response to?

14 A. To me.

15 Q. What is the date of this email?

16 A. March 18, 2020.

17 Q. I'm going to read this first sentence here it says. "You
18 may appreciate that we are receiving numerous requests for
19 assistance from our clients."

20 What is your understanding of whether other airlines
21 were making similar rent deferral request at this time?

22 A. My understanding was that many airlines were impacted
23 significantly by the crisis so were requesting similar things
24 to what Frontier was requesting from their suppliers.

25 Q. I want to go through some of the terms that are in here.

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Thwaytes - Direct

1 Let me ask this, did Ms. O'Callaghan provide a proposal for how
2 to resolve the rent deferral request?

3 A. Yes.

4 Q. Is that what's characterized beginning here?

5 A. Yes.

6 Q. And just so the record is clear, here means. This is our
7 proposal on the 15 aircraft we have leased to Frontier. Is
8 that right?

9 A. That's right.

10 Q. Do you understand these four bullet points to be that
11 proposal?

12 A. Yes.

13 Q. Can you explain to us what bullet point number one means?

14 A. So AMCK was proposing to novate or sale these three
15 aircraft two other aircraft leasing companies, Merx and Amedeo,
16 and requested that we be current on the payments for those
17 three aircraft and that we cooperate in closing the sale of
18 those novations.

19 Q. How about term number two?

20 A. That on the remaining 12 aircraft that they would agree to
21 or they were proposing to defer 50 percent of the rent for
22 three months commencing on the 1st of April.

23 Q. How about the third term?

24 A. And that there'd be no deferral on the remaining five
25 A320neos that were scheduled to deliver and for them to

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Thwaytes - Direct

1 purchase from Frontier per the Framework Agreement.

2 Q. And how about the fourth term?

3 A. That Frontier would pay back the deferred rent over four
4 months and equal payments with eight percent interest per
5 annum.

6 Q. I'm going to scroll up here. What are you seeing on your
7 screen right here?

8 A. My reply to Jane.

9 Q. Can you just summarize this reply?

10 A. Just reiterating to Jane the gravity of the situation and
11 asking her to reconsider our original request.

12 Q. What's the date of your reply?

13 A. March 22, 2020.

14 Q. I want to take us forward a few days.

15 What is the document on the screen now? Excuse me.

16 This has been previously remarked as joint exhibit 48. What is
17 the document showing on your screen?

18 A. It's an email from Jane O'Callaghan.

19 Q. What's the date of this email?

20 A. March 26, 2020.

21 Q. And are you the only recipient of this email?

22 A. No.

23 Q. Are there others from Frontier that are now part of this?

24 A. Yes.

25 Q. Is this about the time where you stopped being the lead

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Thwaytes - Direct

1 negotiator on Frontier's behalf for these negotiations?

2 A. Yeah.

3 Q. Were you still involved in the negotiations?

4 A. I wasn't the one interacting directly with AMCK, but I was
5 being kept up-to-date and informed if there were any actions
6 that I needed to take or the people that worked on my teams.

7 Q. I want to just quickly touch on a couple of items. We'll
8 have other witnesses that get more into depth on some of these
9 items and items we'll see in other exhibits. But I want to
10 orient you, especially as it relates to your specific roles.

11 Can you explain what Ms. O'Callaghan is saying here?

12 A. That AMCK would agree to Frontier's request for a
13 three-month rent deferral beginning in April 2020 for 14 of the
14 15 delivered aircraft. They're excluding the one aircraft that
15 was delivered on the 16th of March 2020.

16 Q. Is this the first time that either party suggested treating
17 the original 14 aircraft differently than the one that had
18 delivered under the Framework Agreement?

19 A. Yes.

20 Q. Did Frontier continue to timely pay its lease payments for
21 the one aircraft that delivered under the Framework Agreement?

22 A. Yes.

23 Q. Even in April of 2020?

24 A. Yes.

25 Q. Looking at the second term here, and I'll read it but ask

O48BFRO2

Thwaytes - Direct

1 for your clarification.

2 It says, With respect to the remaining four SLB
3 aircraft. What does SLB stand for?

4 A. Sale leaseback.

5 Q. So the four sale leaseback aircraft that are scheduled to
6 be delivered in May through July 2020, the delivery schedule
7 will be delayed between Frontier and Airbus by three to six
8 months. Did I read that correctly?

9 A. Yes.

10 Q. Was this the first time that AMCK express to Frontier that
11 they wanted the delivery dates for the aircraft under the
12 Framework Agreement to be delayed?

13 A. I believe so.

14 Q. Was Frontier able to agree to this term on its own?

15 A. No.

16 Q. And why is that?

17 A. Because Airbus per the purchase contract we have with them
18 dictate when aircraft are delivered.

19 Q. Would it have been easy to achieve this request that AMCK
20 is making that Frontier needs Airbus to agree with?

21 A. Definitely not.

22 Q. And why definitely not?

23 A. Because Airbus wants to deliver aircraft as soon as
24 possible.

25 Q. Do you know why that is?

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Thwaytes - Direct

1 A. A few reasons. Airbus receives a significant amount of
2 cash when they deliver aircraft. From an accounting
3 perspective, they book profits or revenues from delivering
4 aircraft, and they don't have room to store aircraft
5 particularly in Mobile, Alabama.

6 Q. I'm going to bring up the next document. This has been
7 previously marked joint exhibit 51. Is this message I'm
8 showing you on the screen the message we just looked at in the
9 prior email?

10 A. Looks like it.

11 Q. I'm scrolling up now. What do you understand this message
12 to be?

13 A. Jane O'Callaghan reaching out to Robert. Do you want more
14 detail than that?

15 Q. What's the general subject matter of this email broadly
16 speaking?

17 A. Just a follow-up on the previous proposal that she had
18 made.

19 Q. I want to direct your attention to this line where she
20 says, We really believe it's in both parties' best interest to
21 defer delivery of these aircraft by three to six months.

22 Was it in Frontier's interest to delay the delivery of
23 these aircraft?

24 A. No.

25 Q. Why not?

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Thwaytes - Direct

1 A. As I stated earlier when we were discussing the process of
2 delivering an aircraft and the sale leaseback transaction,
3 Frontier receives a significant amount of cash from the
4 difference between the price it pays Airbus and it sales the
5 aircraft to a lessor at delivery.

6 It also pays down its credit facility, it's PDP credit
7 facility, so it reduces its debt, doesn't pay interest on that
8 debt. And it also receives cash back from the PDP payments
9 that it had made, or the portion of the PDP payment it had made
10 with its own cash. So at this time, Frontier was very focused
11 on liquidity, and every aircraft delivery provided a
12 significant amount of liquidity.

13 Q. Did Frontier want these planes to deliver when they were
14 ready to be delivered?

15 A. Yes.

16 Q. I want to take us to what's been previously marked as joint
17 exhibit 60. I'm going to scroll down here.

18 Who is the sender of the message that is on this
19 screen here?

20 A. Paul Sheridan.

21 Q. And who is Paul Sheridan?

22 A. The chief executive officer of AMCK.

23 Q. What is the date of this message?

24 A. April 3, 2020.

25 Q. I'm going to skip over the first two paragraphs and read

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Thwaytes - Direct

1 the third one. As mentioned yesterday, we are hearing on a
2 daily basis that many airlines and lessors have agreed
3 deferrals, and in some cases cancellations. And indeed Airbus
4 has just today alluded to cutting its production in order to
5 avoid a glut of undelivered aircraft.

6 At this time on April 3rd had Frontier already began
7 discussing delivery deferrals with Airbus?

8 A. I believe so.

9 Q. Had you in particular already began discussing delivery
10 deferrals with Airbus?

11 A. We were having conversations with Airbus about different
12 things throughout this period. I don't recall exactly if I
13 talked to them about delivery deferrals, but I may have at this
14 point in time. I just don't recall. It was a long time ago.

15 Q. We'll look at some exhibits later that might help with that
16 when we start talking about the conversations between Frontier
17 and Airbus.

18 Before we do, can you think of any reasons that it may
19 have been more difficult for Frontier to achieve delivery
20 deferrals with Airbus than it may have been for other airlines
21 at this time?

22 A. Couple things. One, we didn't have rights in our contract
23 to defer aircraft. Second, our aircraft were either fully
24 built or very close to being fully built because they were
25 scheduled to deliver, if you recall, originally in March, three

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Thwaytes - Direct

1 of them. So that made it I think difficult for Airbus -- well,
2 for Frontier to get Airbus to agree to defer those aircraft.

3 Q. And it looks like -- who is this next message from?

4 A. Jimmy Dempsey.

5 Q. What is the date of this message?

6 A. April 6, 2020.

7 Q. I'm going to focus on the second paragraph of this.

8 Mr. Dempsey says, As a backdrop, I have spoken to Airbus about
9 your request, and their immediate reaction has been to thread
10 in Frontier with default. This is also not a very palatable
11 event for you or us. Did anybody from Airbus ever threaten a
12 default to you?

13 A. Yes.

14 Q. What would the consequence have been to Frontier if Airbus
15 put it in default?

16 A. Potentially catastrophic.

17 Q. Why is that?

18 A. The Airbus contract to purchase aircraft is, if not the
19 core, one of the core contracts of the business. The
20 significant gains received on delivery of the aircraft is a
21 significant and very important part of the business to generate
22 income.

23 Also since it was such a material contract, if it were
24 to default, it could have cross-defaulted into other contracts.
25 And I don't know where that would have ended up, but it could

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Thwaytes - Direct

1 have been catastrophic for the business.

2 Q. Looks like we have another email on April 6 from
3 Mr. Dempsey.

4 Do you see that here?

5 A. Yes.

6 Q. He says, Hi, Paul. Are you available for a call ASAP?
7 Airbus has closed Mobile until April 29. I am keen to get the
8 deferral in place and am conscious that we have 2X rent
9 payments today that we really need to defer.

10 My questions for you are pretty narrow here. What
11 effect does closing Mobile have on deliveries?

12 A. That deliveries cannot occur while it's closed.

13 Q. Does that help achieve what AMCK was looking for?

14 A. No.

15 Q. Why is that?

16 A. Cause they were asking for aircraft to be deferred three to
17 six months.

18 Q. Does this achieve some amount of a deferral?

19 A. Yes, the aircraft won't deliver before April 29th.

20 Q. Do you see another April 6 message. This time from Paul
21 Sheridan addressed to Mr. Dempsey?

22 A. Yes.

23 Q. I'm going to read it, so please bear with me.

24 It says, Hi, Jimmy. We just got off the phone with
25 Robert so I would like to confirm what we discussed. Mindful

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Thwaytes - Direct

1 of the time it might take you to reach agreement with Airbus or
2 to make some other arrangements; and therefore, of the ability
3 for us to reach a deferral agreement. We can't confirm that we
4 won't take any actions or call off any defaults linked to
5 nonpayments of rents on any aircraft where the rent is due from
6 today, 21 April, i.e., for the next ten working days.

7 Did I read that correctly?

8 A. Yes.

9 Q. Focusing on this first part, do you agree that it would
10 take sometime to reach agreement with Airbus on delivery
11 deferrals?

12 A. Definitely.

13 Q. And why is that?

14 A. Airbus was not motivated to defer aircraft for the reasons
15 I stated.

16 Q. How did you understand what AMCK was providing to Frontier
17 on April 6, in terms of rent payments?

18 A. That Frontier didn't need to make any rent payments due
19 during that period.

20 Q. What was the purpose of that?

21 A. To provide time for Frontier to negotiate with Airbus to
22 hopefully reach an agreement to delay the delivery dates of
23 aircraft and then sign an agreement with Airbus to confirm
24 that; and then subsequently to negotiate with AMCK the
25 specifics of the rent deferral and then sign an agreement for

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Thwaytes - Direct

1 that as well.

2 Q. So the waiver was to provide time for those things that you
3 just listed?

4 A. Yes.

5 Q. To your understanding was April 6, the first point in time
6 where AMCK granted Frontier a rent deferral?

7 A. Yes.

8 Q. Prior to April 6, was Frontier fully current on all rent
9 payments with AMCK?

10 A. Yes.

11 MR. SCHAER: Your Honor, we can keep going. I notice
12 that we're right at the Eclipse time that we've been informed
13 of.

14 THE COURT: What time is it suppose to be? I'm
15 uninformed. When is the Eclipse suppose to occur?

16 THE LAW CLERK: The peak is at 3:25.

17 THE COURT: It's 3:10 now.

18 MR. SCHAER: We have another document.

19 THE COURT: You're at a good place to pause.

20 MR. SCHAER: We have another document that I think
21 will not take too much time and still give us time to catch the
22 peak without rushing.

23 THE COURT: Why don't you do that. In the meantime,
24 we're trying to find out where you can actually see the Eclipse
25 from in this building. Nobody will know until it gets closer.

O48BFRO2

Thwaytes - Direct

1 THE LAW CLERK: Judge, Courtney has suggested going to
2 Foley Square outside the courthouse. She said a lot of people
3 are gathering.

4 THE COURT: We'd lose an hour. We have
5 responsibilities.

6 BY MR. SCHAER:

7 Q. Mr. Thwaytes, beyond this ten-day-waiver provided on April
8 6, are you aware of any further deferrals or waivers provided
9 by AMCK to Frontier?

10 A. Yes.

11 Q. And what is that?

12 A. AMCK provided Frontier a waiver of time until Frontier was
13 able to come to an agreement with Airbus and on deferring
14 aircraft and an agreement with them on the rent deferral. And
15 on April 7, there was another agreement to do that. That was
16 for an extended period of time.

17 Q. I'm showing now what's been previously marked as joint
18 exhibit 73. I will represent to the Court that when some of
19 these text messages were produced, they came through in a not
20 easily readable form, so the parties have agreed to use the
21 more readable form than what appears on the screen here.

22 Mr. Thwaytes, what is the date of this message?

23 A. April 7.

24 Q. Is this you and your phone number here?

25 A. Yes.

O48BFRO2

Thwaytes - Direct

1 Q. Whose phone number is this?

2 A. Jimmy Dempsey.

3 Q. Mr. Dempsey says on April 7th, just spoke to Paul Sheridan.
4 He has agreed to do the deferral on a month-to-month basis.

5 What did you take this comment from Mr. Dempsey to
6 mean?

7 A. That Paul Sheridan and Jimmy had agreed to extend the rent
8 deferral from the previous agreement of ten days that was made
9 on April 6, kind of indefinitely into the future until we reach
10 an agreement with Airbus as we were negotiating and ink that
11 agreement, and until we reach an agreement with AMCK about how
12 we would pay back the deferred rent and ink that agreement.

13 Q. Were you aware of an exact repayment date for the deferred
14 rent that was being provided here?

15 A. At this point in time, no.

16 Q. Were you ever aware of an exact repayment date for this
17 deferred rent?

18 A. There was a number of times when AMCK propose that we pay
19 back the deferred rent prior to the next aircraft delivery, and
20 I recall that they also propose at one point paying back the
21 rent by a May 15 date.

22 Q. Did Frontier pay AMCK its monthly rent on the 14 aircraft
23 in April of 2020?

24 A. No.

25 Q. And why was that?

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Thwaytes - Direct

1 A. Because the rent deferral was in place.

2 Q. Can you think of any other reasons that Frontier did not
3 pay monthly rent on those 14 aircraft to AMCK in April of 2020?

4 A. No.

5 THE COURT: I think this is a good place to pause,
6 gives us a little slack. And I also think that there's really
7 no question that the best place to look from is my chambers,
8 one flight up, and so I invite everybody who would like to come
9 to that. It will be really equally good from the robing room
10 here or this window, but there is a large bunch of big windows
11 in my chambers upstairs. There are two ways of getting there.
12 One is the back elevator which is here which I have a pass for
13 and can take passengers up. I think that's going to be very
14 crowded because other people are going to be using it,
15 particularly if they have courtrooms in this area. So I think
16 that may be slow. The ordinate for the youthful and clean
17 living among you is one flight of stairs up, and my clerks can
18 tell you how to get on and off that. They're happy to do it.
19 I have only one here. Mike will help me.

20 THE LAW CLERK: Courtney reported that you cannot see
21 the sun from this side of the building. You have to go
22 outside, but perhaps it's the best that we can do.

23 THE COURT: Did you hear that? Let's just stop, and
24 anybody who wants to go and make their way to the other side
25 can and is wished good luck. Be back here at 3:30, and we'll

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Thwaytes - Direct

1 get back to work.

2 MR. SCHAER: One quick question, your Honor. We have
3 a witness in the witness room. Is that okay to bring him
4 along?

5 THE COURT: This lady sitting back there?

6 MR. SCHAER: Out in the hall in the witness room.

7 THE COURT: You're holding one.

8 MR. SCHAER: We're holding one.

9 THE COURT: Invite them all. I really think you're
10 wasting your time on the side of the building. I'd say forget
11 that.

12 MR. SCHAER: Thank you, your Honor.

13 (Recess)

14 (Continued on next page)

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O483FRO3

Thwaytes - Direct

1 (In open court)

2 THE COURT: Mr. Schaer.

3 BY MR. SCHAER:

4 Q. I want to put a pin in the discussions directly between
5 Frontier and AMCK and briefly turn to the negotiations and
6 discussions going on between Frontier and Airbus. So to do
7 that, we're going to go a short time back from the messages we
8 were just discussing.

9 I'm showing now what's been previously marked as Joint
10 Exhibit 56. Mr. Thwaytes, who are Matthew M. Saks and Ray
11 Bishop?

12 A. Matthew Saks was the sales direct working for Airbus that
13 covered Frontier. And Ray Bishop was the contracts director at
14 Airbus that covered Frontier.

15 Q. What is the date of this e-mail?

16 A. April 2nd, 2020.

17 Q. Can you please explain what this first paragraph of the
18 e-mail is relating to?

19 A. There was an aircraft that had a complication during the
20 delivery process that needed to -- Airbus needed to resolve.
21 And accordingly, they were, as they state, indefinitely
22 delaying the delivery of that aircraft.

23 Q. I am going to stop you there. And I am going to show you
24 the attachment to this exhibit. What is this attachment
25 relating to?

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Thwaytes - Direct

1 A. This is relating to that aircraft that there was a damaged
2 bracket that was discovered on the aircraft. Airbus was trying
3 to resolve it but was unable to. And accordingly, needed to
4 delay delivery of the aircraft until they could resolve it.

5 Q. Can you tell by this message which aircraft this relates
6 to?

7 A. That unique identifier identifies the aircraft, but I can't
8 recall the MSNs for all the aircraft.

9 Q. How about in this highlighted text here?

10 A. I know this aircraft is the aircraft that was scheduled to
11 deliver in this period of time. So it's the aircraft that was
12 I believe the second aircraft under the Framework Agreement
13 with AMCK.

14 Q. Can you read the subject line that's highlighted here.

15 A. "Postponement of the delivery schedule A320neo MSN 9549."

16 Q. Does that tell you which aircraft this relates to?

17 A. Yes. The second aircraft in the Framework Agreement.

18 Q. So, Airbus has indefinitely delayed it. What is the rest
19 of this relating to?

20 A. I'm just impressing upon Airbus that a delay in an aircraft
21 negatively impacts Frontier, it impacts our cash position,
22 because we're not able to utilize our PDP financing facility,
23 at least capacity of the facility that has funded the PDPs for
24 this aircraft. And we're not able to get the proceeds from the
25 sale leaseback transaction that's a difference between the

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Thwaytes - Direct

1 price we're selling to the lessor and the price we're buying
2 from Airbus.

3 Q. Are those the financial benefits we discussed earlier
4 relating to why Frontier wants deliveries of aircrafts to go
5 through?

6 A. Yes.

7 Q. In this second paragraph here, "We received verbal notice
8 this afternoon that our financier is uncomfortable funding
9 aircraft deliveries in 2Q 2020. So we anticipate that Airbus
10 will work with us to manage the timing of upcoming aircraft
11 deliveries."

12 Who is the financier that you are referring to in this
13 April 2, 2020, e-mail?

14 A. AMCK.

15 Q. How do you know that?

16 A. They were the only financier that was expressing that they
17 were uncomfortable funding aircraft deliveries at this time,
18 and they were the aircraft lessor that was delivering a number
19 of aircraft during this time.

20 Q. So, by April 2, had you already begun the discussions with
21 Airbus on the delivery deferrals that AMCK had requested?

22 A. Yes.

23 Q. I'm going to jump us ahead to what has been previously
24 marked as Joint Exhibit 91. I'm going to quickly scroll
25 through these messages.

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Thwaytes - Direct

1 Mr. Thwaytes, what do you understand these messages to
2 relate to?

3 A. This is an ongoing negotiation with Airbus to try to get
4 them to delay the delivery of AMCK's aircraft.

5 Q. And what is the range of dates that we see in these
6 messages?

7 A. The first date that I'm seeing right now is April 11, 2020,
8 and April 17, 2020.

9 Q. Were you the lead negotiator with Airbus regarding the
10 delivery delays that AMCK had requested?

11 A. No.

12 Q. Were you being kept up to date on those negotiations?

13 A. Yes.

14 Q. Similar to how we were discussing with the direct
15 negotiations directly between Frontier and AMCK?

16 A. Yes.

17 Q. I'm bringing us now to the attachment to this e-mail. What
18 is this attachment depicting?

19 A. It depicts the aircraft to be delivered and the schedule
20 delivery month or quarter and year currently contracted per
21 amendment 8 to the purchase agreement with Airbus.

22 Q. Before you go on, just to keep us oriented. Is that what
23 this column in blue is referring to?

24 A. Yes.

25 Q. Okay.

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Thwaytes - Direct

1 A. And then the column in yellow is the new delivery schedule
2 that Airbus was proposing.

3 Q. Do you remember what the aircraft ranks were for the
4 aircraft that fell within the Framework Agreement?

5 A. I do.

6 Q. Which -- what are those ranks?

7 A. 52 to 55 and 58 and 59.

8 Q. So 52 to 55, did I hear you correctly?

9 A. Yes.

10 Q. And 58 and 59?

11 A. Yes.

12 Q. Now, it looks -- how many aircraft at this time were
13 remaining to deliver under the Framework Agreement?

14 A. Five.

15 Q. Looking at this, it looks as though more than just five
16 aircraft were having their delivery dates pushed out. Am I
17 understanding this correctly?

18 A. Yes.

19 Q. Can you please explain why that is?

20 A. When you -- when aircraft are moved into another period,
21 the aircraft that are scheduled to deliver in that other period
22 then also have to move. So there is kind of a cascading effect
23 of the aircraft and the delivery schedule.

24 Q. Why is it that those other aircraft have to move in a way
25 that creates a cascading effect?

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Thwaytes - Direct

1 A. Airbus only has capacity to deliver so many aircraft in any
2 period of time. Frontier only has the capacity to take
3 delivery of so many aircraft in a given period of time. Those
4 are the two main reasons.

5 Q. At this time, April 11 through April 17, 2020, had any
6 other lessor asked Frontier to move delivery dates with Airbus?

7 A. No.

8 Q. Are you aware of any other reason, other than AMCK's
9 request, that Frontier asked Airbus to move these delivery
10 dates?

11 A. Not at this time, no.

12 Q. I should have done this before. But can you just please
13 explain what the current offer is to move the aircraft out from
14 between Airbus and Frontier?

15 A. So they proposed to move the two remaining aircraft that
16 were originally scheduled to deliver in March to June and July,
17 2020. The one aircraft that was scheduled to deliver in
18 May 2020, they proposed to move it to July 2020. The aircraft
19 that was scheduled to deliver in June 2020, they proposed to
20 deliver it in February 2021. And the aircraft originally
21 scheduled to deliver in August 2020, they proposed to move it
22 to November 2020.

23 Q. Okay. I'm showing now what has been previously marked as
24 Joint Exhibit 95. I want to focus you in on this message.

25 Who is the sender of this message?

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Thwaytes - Direct

1 A. Jimmy Dempsey.

2 Q. What is the date of this message?

3 A. April 20, 2020.

4 Q. What do you understand the nature of this message to be in
5 general?

6 A. Jimmy going back to Chris with a proposal to revise the
7 delivery schedule that they had proposed to us in order for it
8 to provide a manageable growth rate for Frontier.

9 Q. Who is Chris?

10 A. Chris Jones was the senior vice president of customers for
11 Airbus Americas I believe.

12 Q. What do you understand Mr. Dempsey is referring to here
13 when he discusses appropriate growth levels?

14 A. It's difficult to have peaks and valleys when aircraft are
15 delivered. It's more beneficial and manageable if you have a
16 relatively steady growth rate, because of operational
17 constraints, hiring pilots, flight attendants, managing the
18 amount of capacity that you have on sale, also financial
19 implications of cash inflows and profits generated from the
20 sale of aircraft, it's manageable and beneficial for that to be
21 relatively steady rather than with peaks and valleys. We were
22 always trying to achieve that.

23 Q. Is this the proposal that Mr. Dempsey was providing to
24 Mr. Jones at Airbus for moving the discussions along?

25 A. Yes.

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Thwaytes - Direct

1 Q. Can you please explain what the second term is referring to
2 here, "All PDPs obligations moved to the new scheduled delivery
3 months and overfunded PDPs under the new delivery schedule get
4 refunded." What does that mean?

5 A. If you don't deliver aircraft, then you don't receive your
6 PDP payments back. So, if you push aircraft out, particularly
7 aircraft that are scheduled to be delivered within 12 months
8 when you've already paid all the PDP payments, then you just
9 have a growth in the amount of PDPs that you have on deposit
10 with Airbus, and that uses your credit capacity, it uses your
11 cash. So we were asking Airbus to refund us the deposits that
12 we had with them for aircraft that, given the new scheduled
13 delivery month, would not have been on deposit with them unless
14 we had already paid the PDPs, which we had, because the
15 scheduled delivery month was different prior to the new
16 scheduled delivery month.

17 Q. I just want to draw your attention to this aspect. What
18 does Mr. Jones say in response to Frontier's request to refund
19 the PDPs for all of the reasons that you just explained?

20 A. That they cannot refund the PDPs.

21 Q. Was Frontier keeping AMCK apprised or generally up to date
22 with the conversations it was having with Airbus about
23 deferring these deliveries?

24 A. I believe Jimmy and Robert were keeping them generally up
25 to date.

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Thwaytes - Direct

1 Q. Were you ever able to actually finalize a deal with Airbus
2 to defer the delivery dates of the aircraft that AMCK had
3 requested?

4 A. Yes.

5 Q. And when was that?

6 A. I believe March 5 -- sorry. May 5 of 2020.

7 Q. I am showing now what has been previously marked as Joint
8 Exhibit 134. What is the date of this e-mail, Mr. Thwaytes?

9 A. May 5, 2020.

10 Q. What does this e-mail generally relate to?

11 A. It's an amendment to the purchase agreement reflecting the
12 agreement that we were able to finally accomplish with Airbus.

13 Q. What number amendment is that?

14 A. Amendment No. 9.

15 Q. I'm showing the attachment to these e-mails. What is the
16 document that's on your screen now?

17 A. Amendment No. 9.

18 Q. I'm scrolling down to page 11. What does page 11 reflect?

19 A. It is the delivery schedule for the aircraft contemplated
20 in the purchase agreement with Airbus.

21 Q. Is this the updated delivery schedule?

22 A. Yes.

23 Q. We're back to the memory test. Do you remember the
24 aircraft rank for the aircraft that were scheduled under the
25 Framework Agreement?

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Thwaytes - Direct

1 A. Even though I have three little kids I can remember things
2 like this. 52 to 55 and 58 and 59.

3 Q. What was Frontier ultimately able to achieve in terms of
4 moving these aircraft? Tell us about the first four here.

5 A. Well, that March 2020 aircraft at rank 54 was the aircraft
6 that was delivered on March 16. 52, 53 and 55 we were able to
7 achieve moving those aircraft to July 2020.

8 Q. And then how about 58 and 59?

9 A. We were able to achieve moving those to February 2021 and
10 November 2020.

11 Q. Now, these dates here, three in July, and one in March we
12 know delivered. Are those the same dates that we saw in the
13 prior attachment proposal for moving these aircraft delivery
14 dates?

15 A. Can you bring that up for me to look again?

16 Q. Yes.

17 A. No, they're not.

18 Q. Okay. What is the difference?

19 A. We were able to achieve an additional one-month delay in
20 the delivery of one of the aircraft from June to July.

21 Q. So when would the next aircraft, after this May 5 agreement
22 that Frontier inked with Airbus, when would the next aircraft
23 have delivered?

24 A. July 2020.

25 Q. Is this the extent of the deferrals that Frontier was able

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Thwaytes - Direct

1 to achieve for AMCK being three in July, one in November of
2 2020, and one in February of 2021?

3 A. No, we were able to achieve even more than that.

4 Q. How is that?

5 A. We were able to move that November 2020 aircraft to
6 February 2021.

7 Q. How was Frontier able to achieve that?

8 A. We were able to swap that with another lessor.

9 Q. Can you just explain how that swap process works?

10 A. We asked the other lessor to move the commitment that we
11 had with each other from delivering an aircraft in
12 February 2021, instead to delivering an aircraft in
13 November 2020. And when they agreed do that, then we were able
14 to provide AMCK with a further delay in that one aircraft by
15 having them deliver the aircraft in February 2021, instead of
16 the November 2020 aircraft.

17 Q. So was Frontier also working with its other aircraft
18 leasing company partners to achieve what AMCK had requested?

19 A. Yes.

20 Q. Can you identify for us the plane that Frontier was able to
21 swap?

22 A. 59.

23 Q. So that's the one that Frontier swapped out from AMCK?

24 A. Yes.

25 Q. And can you identify the one that it swapped in?

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Thwaytes - Direct

1 A. 61.

2 Q. Is that this one here?

3 A. Yes.

4 Q. So, what are the final I guess deferred delivery dates that
5 Frontier was able to achieve for AMCK?

6 A. Three in July 2020 and two in February 2021.

7 Q. Did Frontier ever communicate that to AMCK what it was able
8 to achieve?

9 A. I believe Jimmy and Robert did.

10 Q. Okay. Let's go back to our discussions between Frontier
11 and AMCK.

12 So last we left them, we had looked at the April 6 and
13 April 7 communications relating to those deferrals. Now let's
14 pick it up from there, though we'll do it with a light touch
15 because you were not the lead on those negotiations.

16 I'm showing what's been marked as Joint Exhibit 111.

17 Who is the sender of this message that's on your
18 screen?

19 A. Paul Sheridan, the chief executive officer of AMCK.

20 Q. And what is the date of this message?

21 A. April 13, 2020.

22 Q. Mr. Sheridan says, "Hi, Jimmy. Apologies for the slow
23 response but I was waiting for some feedback from the
24 shareholders. Essentially we want to tie the deliveries to
25 having no outstanding deferrals so it would only work if we

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1 recast the deferral agreement."

2 Did I read that correctly?

3 A. Yes.

4 Q. Is this consistent with your understanding about when AMCK
5 wanted Frontier to repay the deferred rent?

6 A. Yes.

7 Q. What is that understanding, if you could just restate it
8 here?

9 A. That they wanted us to repay the deferred rent before the
10 next aircraft delivery.

11 Q. Can you remind us when was Frontier eventually able to push
12 out that next aircraft delivery to?

13 A. July 2020.

14 Q. What is the date of this e-mail again?

15 A. April 13, 2020.

16 Q. Scrolling up it looks like the conversation has skipped a
17 couple of weeks. We have April 27, 2020. Do you know why the
18 conversation, at least in this e-mail thread, might have
19 skipped a couple of weeks?

20 A. Because we were negotiating with Airbus to achieve the
21 delay in aircraft delivery that AMCK requested from us.

22 Q. Just to skip to the end of this first paragraph here. Do
23 you know what CP means in the context of this e-mail?

24 A. Condition precedent.

25 Q. I am going to read this e-mail. Who is the sender of this

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1 e-mail?

2 A. Jimmy Dempsey, the CFO of Frontier.

3 Q. He says, "Hi, Paul. I have just been briefed by Robert and
4 was working on the assumption that we had to be current on all
5 rent for you to finance the upcoming deliveries. This is set
6 out in your e-mail below. I put a scheme in place with Airbus
7 that would facilitate short-term deferrals of the aircraft on
8 the basis that you would honor your agreement. Please confirm
9 this is the case as we have a lease signed for these aircraft
10 and are willing to ensure the deferred rent is paid as a CP of
11 delivery," which you have explained means condition precedent
12 of delivery.

13 Did I read that correctly?

14 A. Yes.

15 Q. Is this consistent with your understanding of the scope of
16 the rent waiver and when AMCK was interested in Frontier paying
17 back that deferred rent?

18 A. Yes, at this time.

19 Q. And what is that understanding again?

20 A. That we needed to pay back the deferred rent before the
21 next aircraft delivery.

22 Q. I'm showing now what's been marked as Joint Exhibit 120.
23 Do you see on the screen the message we just looked at?

24 A. Yes.

25 Q. And so what do you understand this top message to relate

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1 to?

2 A. This is in furtherance of the negotiation with AMCK.

3 Q. Who is the sender of this e-mail?

4 A. Paul Sheridan, the CEO of AMCK.

5 Q. What is the date of this e-mail?

6 A. April 30, 2020.

7 Q. If we look at the first bullet point here, it says
8 deliveries in July -- let me go back.

9 What do you understand these bullet points to be?

10 A. Paul Sheridan essentially agreeing with what we had
11 achieved with Airbus, to move the delivery of the five
12 aircraft, three to July 2020, two to February 2021.

13 Q. Let me stop you there. Is this consistent with what
14 Frontier, the first bullet point, was able to achieve with
15 Airbus?

16 A. Yes.

17 Q. And the second term, all payments to be current on May 15,
18 2020, and to remain current.

19 What do you understand this to mean?

20 A. This was a change from their previous request that all
21 payments be current before the next scheduled aircraft
22 delivery, which was July 2020. Now they were asking that we
23 instead be current on May 15, 2020.

24 Q. Now before we go to the third bullet point, let's read this
25 final sentence. It says, "Given the extent of the damage that

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1 has been done to the airline industry, and to airline and
2 lessor funding sources, we need to have some additional
3 security to ensure that we can obtain our shareholder funding
4 for the deliveries."

5 What do you understand "additional security" to mean
6 in this sentence?

7 A. It was an additional significant ask from AMCK.

8 Q. Is this third bullet point here referring to that
9 additional security?

10 A. Yes.

11 Q. I am going to read this first sentence then I'm going to
12 ask you to break it down for us. It says, "Lease extensions of
13 4 years on the 12 A320neos funded in 2017, 2018, and 2019, at
14 rents to be agreed, plus a removal of the ETOs on the six
15 aircraft from the latest deal."

16 What is an ETO here?

17 A. An early termination option.

18 Q. Do you understand this request -- does this request in this
19 bullet point actually relate to two separate items?

20 A. Yes.

21 Q. Let's go through the first item. Lease extensions of
22 4 years on the 12 A320neos funded in 2017, 2018 and 2019 at
23 rents to be agreed. Can you please explain to us what that
24 means?

25 A. These 12 A320neos were on eight-year leases with AMCK. So

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1 they were asking for us to extend the leases by an additional
2 50 percent, which at the agreed lease rates was asking us to
3 commit to another 150, 160 million dollars, increase the
4 obligation to them by that amount.

5 Q. So this first ask is an approximately 150,
6 160 million dollar request?

7 A. Generally, yes, based on the lease rates we were paying to
8 them at the time.

9 Q. And how about this second request here. Removal of the
10 early termination options on the six aircraft from the latest
11 deal. Can you please explain that to us?

12 A. These aircraft had 12-year leases, but this early
13 termination option enabled Frontier to exit the lease at
14 8 years if it chose to do so. So, they were asking us to
15 essentially do the same thing as the first 12, commit to four
16 additional years. Which then the lease rates for those
17 aircraft were different than the others, but another
18 \$70 million obligation or so we would be committing to them
19 with them.

20 Then you could look at it another way, where we would
21 not be able to renegotiate the lease rate at the end of the
22 8-year period, and we saw that as an opportunity to reduce the
23 cost of leasing these aircraft by \$7 million or so. So it was
24 a significant ask.

25 Q. What's the date that this ask came in on again?

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1 A. April 30, 2020.

2 Q. Let's go forward another week.

3 I am now showing what has been previously marked as
4 Joint Exhibit 142. Who is the sender of this e-mail?

5 A. Jimmy Dempsey.

6 Q. What is the date of this e-mail?

7 A. May 8, 2020.

8 Q. Do you understand these two e-mails, this one down here,
9 and this one up here, to be linked to each other?

10 A. Yes.

11 Q. On May 8, Mr. Dempsey says, "I have been waiting patiently
12 for your response to our call whereby I offered the following
13 solutions" and then it lists a number of terms.

14 Do you know what call this refers to?

15 A. I wasn't on the call. But I -- but I believe Jimmy and
16 Paul had a call in between when Paul sent that previous e-mail
17 on April 30 and this date discussing further negotiating the
18 particulars of the agreement we were trying to reach.

19 Q. Are you aware if AMCK countered this negotiation by
20 Mr. Dempsey?

21 A. They did not counter this May 8 correspondence.

22 Q. Did AMCK respond in any way to this correspondence?

23 A. I don't know if you would consider it a response to this
24 correspondence, but they sent us a notice of termination.

25 Q. Is that the next correspondence that Frontier received from

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1 AMCK after Frontier sent this negotiation proposal?

2 A. Yes.

3 Q. Can you say that answer again?

4 A. Yes.

5 Q. I'm showing you now what's been previously marked as Joint
6 Exhibit 146. What is the date of this e-mail?

7 A. May 8, 2020.

8 Q. Who is the sender?

9 A. Paul Sheridan.

10 Q. And this is being sent to you?

11 A. Yes.

12 Q. We see there is an attachment here. Let me take you down
13 to the attachment. Do you know what this document is?

14 A. A notice of termination of the Framework Agreement.

15 Q. Can you please just summarize your general understanding of
16 this document?

17 A. That AMCK was terminating the Framework Agreement for the
18 six aircraft with Frontier.

19 Q. Can you please explain how an alleged -- what was the basis
20 for the termination, as you understand it?

21 A. That Frontier had not made lease payments on time.

22 Q. Which lease payments would those have related to?

23 A. For the 14 aircraft.

24 Q. Did those 14 aircraft fall under the Framework Agreement
25 that's being terminated here?

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1 A. No.

2 Q. So, can you just generally explain to us how an alleged
3 non-payment of rent for those 14 aircraft could lead to AMCK
4 sending a letter terminating a different Framework Agreement?

5 A. Yeah. The agreements have cross default provisions between
6 them. So if you are in default under a lease, one of the 14
7 leases, then it would cross into being into default under the
8 Framework Agreement.

9 Q. Do you remember your reaction when you received this notice
10 of termination on May 8, 2020?

11 A. Very surprised.

12 Q. What was your understanding of the status of the rent
13 deferral with AMCK when you received this notice of
14 termination?

15 A. That it was ongoing.

16 Q. Before receiving this termination notice, did AMCK tell you
17 that negotiations were over?

18 A. No.

19 Q. Between April 7 and May 8 or April 6 and May 8, excuse me,
20 before receiving the termination notice, did anyone at AMCK
21 ever provide you with notice that Frontier needed to pay
22 outstanding rent payments?

23 A. No.

24 Q. To your knowledge, between April 6 and May 8, before
25 receiving the termination notice, did anyone at AMCK ever

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1 provide anyone at Frontier with notice that Frontier needed to
2 pay outstanding rent payments?

3 A. No.

4 Q. I want to briefly go over this document that has been
5 marked as Joint Exhibit 148. Mr. Thwaytes, what is just your
6 general understanding of what this document is?

7 A. A response from Frontier to AMCK to the notice of
8 termination that they had sent to us.

9 Q. Did Frontier ever ask AMCK to withdraw its termination?

10 A. I believe in this letter or in a correspondence like this,
11 yes.

12 Q. Did AMCK ever actually withdraw its termination of the
13 Framework Agreement?

14 A. No.

15 Q. Did Frontier end up paying the outstanding rent alleged by
16 AMCK?

17 A. Yes.

18 Q. Do you know the date that Frontier paid that outstanding
19 rent?

20 A. I think it was May 13.

21 Q. How many business days would that have been after Friday,
22 May 8?

23 A. I believe it's three business days.

24 Q. Can you please remind us of the grace period provided for
25 in the lease agreements?

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1 A. Three business days.

2 Q. Has Frontier remained current on all of its rental payments
3 with AMCK since then, at least while you were at Frontier?

4 A. At least while I was at Frontier, yes.

5 Q. Okay. We're in the homestretch with you.

6 So, AMCK has terminated the Framework Agreement and
7 taken delivery of the next five aircraft, and now, according to
8 you, Frontier has fully paid that rent on May 13.

9 What happens next?

10 A. Frontier moves very quickly to try to find lessors to
11 finance these aircraft that are now delivering in July of 2020.

12 Q. Did Frontier engage in the RFP process that you talked to
13 us about earlier?

14 A. Yes.

15 Q. Can you remind us, how much in advance of an aircraft
16 delivering does Frontier like to engage in a RFP process?

17 A. 12 to 18 months.

18 Q. How many months here did Frontier have to engage in an RFP
19 process before an airplane was delivering?

20 A. Two.

21 Q. Could Frontier have just taken these aircraft without a
22 leasing company?

23 A. It could.

24 Q. What would the consequences have been?

25 A. An outflow of 150ish million dollars of cash.

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1 Q. Is Frontier structured or is that in Frontier's financial
2 plan to purchase these aircraft without leasing companies?

3 A. Frontier's business model is to do sale leasebacks on all
4 of the new delivery of aircraft, so it wasn't its plan.

5 Q. I want to introduce what's been previously marked as Joint
6 Exhibit 156.

7 Who is this e-mail from?

8 A. Robert Fanning.

9 Q. What is the date of this e-mail?

10 A. June 2, 2020.

11 Q. I am going to read the contents here. It says, "See below
12 offer from CDB, slightly better than JSQ."

13 Can you just tell us who is CDB; who is JSQ?

14 A. CDB is China Development Bank, a lessor bank. And Jackson
15 Square Aviation, another aircraft lessor.

16 Q. "The holiday rent they offered to probably be kicked out
17 for six months. This offer is consistent with other offers I'm
18 seeing, and unfortunately for now very close to the new market
19 pricing for A320neos."

20 What is this e-mail capturing?

21 A. It's giving an update on the proposals that we had received
22 from aircraft lessors to finance the three aircraft delivering
23 in July, specifically the CDB proposal.

24 Q. So, does this just relate to the three aircraft that were
25 delivering in July?

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1 A. Yes.

2 Q. Did Frontier put out separate RFPs for the three delivering
3 in July from the two delivering in February?

4 A. Yes.

5 Q. Why is that?

6 A. There was a very short period of time to complete the
7 process to finance the aircraft that were delivering in July,
8 and we wanted to just focus on that, and wait to focus on
9 financing deliveries after that subsequently.

10 Q. How did these terms that we are seeing here compare with
11 those that AMCK had agreed to in the Framework Agreement?

12 A. Worse.

13 Q. How so?

14 A. Purchase price is less by two and a half million, basic
15 rent is higher, I believe no early termination option.

16 Q. I want to introduce now what's been previously marked as
17 Joint Exhibit 157.

18 Who is the sender in this e-mail?

19 A. Jane O'Callaghan.

20 MR. ALEXANDER: Your Honor, I'd like to object at this
21 time. This document contains what is a settlement proposal
22 under Rule 408. And we've objected to the use of this type of
23 evidence in the pretrial order. We've also objected to
24 documents that contain the e-mail described here.

25 Now, I think this particular document slipped into the

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1 agreed exhibits, but it contains the same issue so we wanted to
2 raise it with your Honor.

3 THE COURT: I'd like to take a look at it.

4 MR. SCHAER: Would you like me to question through it
5 or do you want to see?

6 THE COURT: I'd like to see it first.

7 MR. SCHAER: I believe it's on your screen, your
8 Honor, but I can show it in hard copy.

9 THE COURT: Oh this?

10 MR. SCHAER: Let me pull it back up, your Honor.

11 THE COURT: This is not used in a way that would
12 offend the rule against evidence of a settlement offer.
13 Overruled.

14 MR. SCHAER: Thank you, your Honor.

15 THE COURT: 408.

16 BY MR. SCHAER:

17 Q. Who is this offer from?

18 A. Jane O'Callaghan.

19 Q. What is the date of this?

20 A. June 18, 2020.

21 Q. What is the general contents of this e-mail?

22 A. It is a proposal from Jane to finance the three aircraft
23 delivering in July 2020.

24 Q. Did you expect AMCK to make a proposal for three of the
25 aircraft that had previously been part of the Framework

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1 Agreement before it terminated the Framework Agreement?

2 A. No.

3 Q. Why not?

4 A. They had just terminated the Framework Agreement, and
5 showed a significant discomfort with delivering aircraft under
6 sale leaseback agreements at this time.

7 Q. How did these terms that Ms. O'Callaghan is providing to
8 you compare to the terms that were in the Framework Agreement
9 that AMCK had terminated?

10 A. Worse.

11 Q. In which ways?

12 A. Lower purchase price.

13 Q. How much lower?

14 A. 3 million per aircraft.

15 Q. How else is this --

16 A. Higher monthly lease rent.

17 Q. About how much higher would this have been?

18 A. I don't recall. I'd have to look at the amount in the
19 Framework Agreement.

20 Q. How much is the lease rent being provided here?

21 A. 339,600 U.S. per month.

22 Q. Let me take us back to what I believe is the Framework
23 Agreement. What was the base fixed rental in the Framework
24 Agreement?

25 A. \$299,880 U.S.

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1 Q. And then let me show you joint Exhibit 29. This is the
2 lease agreement for MSN 10038. How much is the actual rent
3 that Frontier paid on the aircraft that delivered under the
4 Framework Agreement?

5 A. \$269,525.94 U.S.

6 Q. So between that amount, 269,000 and change, and the amount
7 that Ms. O'Callaghan was putting in this proposal, what's the
8 difference?

9 A. \$70,000 per month.

10 Q. Can you please read this final paragraph for us.

11 A. "I should also point out that this proposal is conditioned
12 on the release and waiver of any potential legal claims by
13 Frontier arising from the termination of the Framework
14 Agreement."

15 Q. Did Frontier attempt to negotiate this proposal with AMCK?

16 A. Yes, we provided them a counterproposal.

17 Q. Were the parties ever able to reach an agreement on these
18 three aircraft in July of 2020?

19 A. No.

20 Q. I'm showing now what's been previously marked as Joint
21 Exhibit 159. What is this document?

22 A. It is a board approval request from Frontier Airlines to
23 its board of directors.

24 Q. What's the date of this document?

25 A. July 1st, 2020.

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1 Q. Scrolling down to the second page, and I'll read this for
2 you. It says, "In order to obtain financing for the three July
3 deliveries which would have otherwise been financed by AMCK,
4 under the Framework Agreement, management reached out to
5 lessors who are competitive in prior RFPs, including ICBC,
6 BOCOM, ALM, GOAL, CALC, Arena Aviation Capital, GECAS, BOC
7 Aviation, CDB Aviation, and Jackson Square Aviation."

8 Are all of those airline -- or airplane leasing
9 companies?

10 A. They're all aircraft leasing companies.

11 Q. "Both ICBC and BOCOM declined to provide bids due to
12 current political tensions between U.S.A. and China. The most
13 competitive offers were from Jackson Square Aviation and CDB
14 Aviation. The economics of the respective offers are described
15 in the following page."

16 Did I read that correctly?

17 A. Yes.

18 Q. Is that your memory of this time and the RFP process for
19 these three July aircraft?

20 A. Yes.

21 Q. We are on the next page. What is this page trying to
22 capture for us?

23 A. This is a comparison of the CDB and Jackson Square
24 proposals to finance these three aircraft to the terms that
25 were agreed between AMCK and Frontier per the Framework

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1 Agreement.

2 Q. I want you to help us walk through some of the pricing
3 terms. What would the sale price, the 2020 sale price have
4 been for the AMCK aircraft under the Framework Agreement?

5 A. 51 million.

6 Q. What were the offers from CDB and Jackson Square?

7 A. 48.5 million.

8 Q. How much was -- what the difference between those?

9 A. Two and a half million.

10 Q. Better or worse?

11 A. Worse.

12 Q. What would the base lease rent have been for the AMCK
13 airplane?

14 A. 299,880.

15 Q. What were the terms provided by CDB and Jackson Square?

16 A. CDB proposed 315,250. Jackson Square proposed \$326,500.

17 Q. Can you explain, what does the final rent row try to
18 capture for us?

19 A. The total of all of the rent payments that you'd make under
20 the term of the lease.

21 Q. Is there a difference between the airplanes that would have
22 been under the AMCK Framework Agreement versus the offers by
23 CDB and Jackson Square?

24 A. Seven to eight and a half million difference.

25 Q. It looks like the next two columns, the next two rows are

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1 the same across the three different leasing companies. Is that
2 fair to say?

3 A. Yes.

4 Q. What is this row capturing for us, total per aircraft?

5 A. That's the total cost per aircraft that Frontier forecasted
6 for these three aircraft. Or, I'm sorry, per aircraft while
7 the aircraft would be leased by Frontier.

8 Q. How much would it have cost per aircraft for Frontier under
9 the AMCK Framework Agreement?

10 A. 82.5 million.

11 Q. And how about under the CDB proposal?

12 A. 89.4 million.

13 Q. How about under the Jackson Square proposal?

14 A. 90.8 million.

15 Q. Were the CDB proposals and Jackson Square proposals better
16 for Frontier or worse for Frontier?

17 A. They were worse for Frontier.

18 Q. About approximately how much worse?

19 A. The CDB proposal was about \$7 million worse per aircraft.
20 The Jackson Square proposal about \$8 million worse.

21 Q. Do you know which leasing company Frontier went with for
22 these three aircraft that were now delivering in July of 2020?

23 A. Frontier selected the best economic terms, which was CDB.

24 Q. Do you know which leasing company Frontier went with for
25 the remaining two aircraft that were scheduled to deliver in

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1 February of 2021?

2 A. Jackson Square.

3 Q. How did Frontier select Jackson Square?

4 A. Through an RFP process.

5 Q. Similar to the one we've just looked at with CDB?

6 A. Yes.

7 Q. Is it your understanding that Jackson Square offered the
8 most competitive terms in that RFP process?

9 A. Yes.

10 Q. I want to introduce what's been previously marked as Joint
11 Exhibit 163. What is the date of this document?

12 A. October 7, 2020.

13 Q. Do you see there is an attachment?

14 A. Yes.

15 Q. I am going to take us down to the attachment. What is this
16 attachment showing us?

17 THE COURT: What's the objection? I thought I
18 heard --

19 MR. ALEXANDER: No objection, your Honor.

20 THE COURT: Okay.

21 MR. SCHAER: I said "attachment" one too many times I
22 think?

23 THE COURT: Proceed.

24 MR. SCHAER: Thank you.

25 Q. What is this document showing us?

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1 A. This document is showing a comparison of the terms in the
2 Framework Agreement for the five -- in the AMCK Framework
3 Agreement for the five aircraft that were delivering in July of
4 2020 and then February of 2021, and compared to CDB and Jackson
5 Square's proposals and final terms for those aircraft. And
6 then the total negative financial impact to Frontier per
7 aircraft and the total for all five aircraft.

8 Q. What does B/W mean in this line?

9 A. Better or worse.

10 Q. If something is in parentheses, what is that relating to
11 us? Or if a number is in parentheses, what is that relating to
12 us?

13 A. It means it's worse.

14 Q. We are going to go through this reasonably methodically.
15 What is the purchase price comparison here?

16 A. AMCK in the Framework Agreement had agreed to purchase the
17 aircraft for \$51 million each. CDB purchased the three
18 aircraft delivering in July '20 for 48 and a half million each,
19 and Jackson Square proposed or had agreed to purchase the
20 aircraft delivering in February 2021 for 49 million each.

21 Q. How much worse were the terms under the CDB agreement and
22 the JSA agreements as it relates to the purchase price that
23 would have been paid otherwise under the Framework Agreement
24 with AMCK?

25 A. The CDB agreement was two and a half million dollars worse

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1 per aircraft. And the Jackson Square agreement was 2 million
2 dollars worse per aircraft.

3 Q. This line says final eight year rent. What is that
4 referring to?

5 A. That's the rent that Frontier would have paid to AMCK over
6 the eight-year lease period per month.

7 Q. For the remaining five aircraft?

8 A. For the remaining five aircraft.

9 Q. What does four-year extension rent refer to here?

10 A. The assumption of how much the rent would have been reduced
11 after year eight, if Frontier elected to utilize early
12 termination option and renegotiate the rent.

13 Q. Is this trying to capture the value that Frontier places on
14 the early termination option?

15 A. Some of the value.

16 Q. The line below it says final 12-year rent. What is that
17 for CDB and for JSA?

18 A. That's the monthly rent that Frontier would pay to CDB and
19 to JSA per aircraft over the 12-year lease that was being
20 contemplated or agreed.

21 Q. So, just a quick point of reference. This e-mail is coming
22 to us in October of 2020. Is that right?

23 A. That's right.

24 Q. And when would the aircraft have delivered under the JSA
25 agreements?

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1 A. In February 2021.

2 Q. Had the final rent calculations been performed for the JSA
3 aircraft in October of 2020?

4 A. No.

5 Q. What is this number reflecting then?

6 A. It's the base rent, before the adjustment.

7 Q. So, would there have been an adjustment to this base rent?

8 A. Yes.

9 Q. What is this nominal rent line showing us here?

10 A. That's the total of the final 12-year rent amounts for all
11 of the aircraft contemplated. So, for the three aircraft with
12 CDB multiplied by 315.3 times 144 payments. Same math with the
13 Jackson Square aircraft.

14 Q. How much worse was the rent, the nominal rent under the CDB
15 and JSA aircraft as it relates to the AMCK aircraft, that would
16 have been under the AMCK Framework Agreement?

17 A. CDB 7,462,000.6. And Jackson Square, 8,933,000.1 worse.

18 Q. I am going to skip NPV for a moment. What is on-watch
19 burden?

20 A. That's a condition in the lease where Frontier would be
21 obligated to cure a maintenance issue with an engine on an
22 aircraft if it was deemed on watch. And the -- that's
23 representing the probability of that happening, and then the
24 cost to rectify that. And you don't see that in the AMCK
25 column or the Jackson Square column, because only CDB required

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1 that we take on that obligation.

2 Q. I want to go back up now to NPV rent. What does NPV stand
3 for?

4 A. Net present value.

5 Q. Can you say that one more time?

6 A. Net present value.

7 Q. What is net present value trying to capture?

8 A. The present value of future cash flows.

9 Q. How does Frontier arrive at a net present value?

10 A. It discounts the future cash flows by a discount rate back
11 to day zero.

12 Q. What is the discount rate that is being used in this
13 document?

14 A. 10 percent.

15 Q. What is that 10 percent trying to reflect?

16 A. Frontier's cost of capital.

17 Q. Can you explain what a cost of capital is?

18 A. A company's capitalized with debt and equity. And the cost
19 of capital is the weighted average cost of debt and equity. So
20 the cost to fund the business.

21 Q. Is this 10 percent figure an exact cost of capital figure
22 for Frontier?

23 A. No.

24 Q. Why did Frontier choose a 10 percent discount rate in this
25 document?

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1 A. Frontier used a 10 percent discount rate generally across
2 the business when doing NPV calculations. So it used it in
3 this document just like it used it for all of the NPV
4 calculations that it did.

5 Q. Is it possible to arrive at an exact cost of capital
6 figure?

7 A. Yes.

8 Q. How would you do that?

9 A. You look at the percentage of the capital structure, debt
10 and equity, that's debt, and that's equity. You would
11 determine how much the debt costs and multiply it by its
12 percentage of the total capital structure, and then you'd
13 calculate the cost of equity for a particular company, and
14 multiply it by the percentage of the capital structure, that's
15 equity, and then you'd add those two numbers together.

16 Q. If you wanted to perform that calculation, or I should say,
17 is that the discount rate that would be the product of that
18 calculation, in reality, is that changing frequently?

19 A. It changes all the time, because the underlying interest
20 rates, swap rates, treasury rates that underpin the cost of
21 debt are traded publicly and change all the time. And then the
22 cost of equity changes all the time, at least when the
23 financial markets are open and you can see volatility and
24 pricing.

25 Q. So is that amount changing daily?

O483FRO3

Thwaytes - Cross

1 A. Potentially every second or every minute.

2 Q. To be clear, did Frontier perform that calculation prior to
3 applying its general 10 percent discount rate in this document?

4 A. No.

5 Q. When you were at Frontier, was this 10 percent rate fairly
6 constant?

7 A. Yes.

8 Q. Was this the same rate that Frontier was using when you
9 left Frontier nine months ago?

10 A. Yes.

11 Q. Now, even using this generic 10 percent discount rate,
12 that's not the product of the calculation that you said you
13 would need to do to get the accurate rate. What is the amount
14 of damages that is being calculated in this document by virtue
15 of having to select CDB and JSA to take over those five
16 aircraft?

17 A. The nominal amount was 53,179,000.5 U.S. And the
18 discounted total was 34,303,000.7 U.S.

19 Q. Thank you, Mr. Thwaytes.

20 A. Thank you.

21 CROSS-EXAMINATION

22 BY MR. ALEXANDER:

23 Q. Good afternoon Mr. Thwaytes.

24 A. Good afternoon.

25 Q. We're just getting situated here with our documents. But,

O483FRO3

Thwaytes - Cross

1 thank you for your time today.

2 You testified earlier that Frontier asked Airbus to
3 move aircraft deliveries in order to accommodate AMCK. Do you
4 recall that?

5 A. Yes.

6 Q. You also testified that you were involved in those
7 discussions yourself; is that right?

8 A. Early on I was involved in the discussions.

9 Q. And as of March 2020, how many aircraft did Frontier have
10 to purchase from Airbus under their purchase agreement?

11 A. Remaining to be purchased or that were contemplated in
12 total throughout the -- that purchase agreement and its
13 amendments? Can you clarify?

14 Q. As of March 20, how many aircraft remained to be delivered
15 under the purchase agreement?

16 A. Around 160, 170.

17 Q. Do you recall that on March 16, 2020, Frontier and Airbus
18 agreed on an amendment to their purchase agreement?

19 A. Yes.

20 Q. And was that Amendment No. 8?

21 A. I believe so.

22 Q. I'd like to show you a copy of that agreement, it's Joint
23 Trial Exhibit 21. And do you understand what this document is,
24 Mr. Thwaytes?

25 A. It looks like Amendment No. 8 to the purchase agreement

O483FRO3

Thwaytes - Cross

1 between Airbus and Frontier.

2 MR. ALEXANDER: Your Honor, I'd like to move to admit
3 Joint Trial Exhibit 21.

4 MR. SCHAER: No objection.

5 THE COURT: Received.

6 (Joint Exhibit 21 received in evidence)

7 Q. Mr. Thwaytes, I'd like to direct your attention to the
8 appendix to this agreement which starts on page 6. Do you see
9 that this first page of the appendix contains a schedule of
10 aircraft deliveries?

11 A. Yes.

12 Q. And this schedule here on this page shows 44 aircraft
13 deliveries going up to September 2019. Is that right?

14 A. Yes.

15 Q. I'd like to direct you to the next page of this exhibit,
16 which you can see on the screen, shows continued deliveries in
17 2019 through 2020, and up to May 2021, at what's listed there
18 as number 80. Do you see that?

19 A. I do.

20 Q. And I believe you testified earlier, so you probably have
21 these numbers still in your head, but do you recall what are
22 the aircraft rank numbers of the Framework Agreement aircraft?

23 A. 52 to 55, and 58 and 59.

24 Q. So looking at 52, 53, and 54, I think you mentioned are
25 among the Framework Agreement aircraft?

O483FRO3

Thwaytes - Cross

1 A. Yes.

2 Q. And those were the only aircraft scheduled to be delivered
3 in March 2020, right?

4 A. Yes.

5 Q. So, was AMCK the only lessor responsible for financing
6 aircraft deliveries for Frontier in March of 2020?

7 A. Yes.

8 Q. Mr. Thwaytes, I believe you testified earlier that the
9 first delivery under the Framework Agreement took place this
10 same day on March 16, 2020. Is that right?

11 A. Same day as what?

12 Q. Sorry. The same day as this March 16 Amendment No. 8 to
13 the Airbus purchase agreement?

14 A. Took place on March 16, 2020.

15 Q. So to finance that purchase, AMCK paid \$51 million; is that
16 right?

17 A. Yes.

18 Q. And that was the very first delivery under the Framework
19 Agreement. Do you recall hearing any delay issue related to
20 the second delivery under the Framework Agreement?

21 A. At what point in time?

22 Q. Do you recall there being an indefinite delay regarding
23 that aircraft because of a technical issue that Airbus notified
24 you of?

25 A. Yes.

O483FRO3

Thwaytes - Cross

1 Q. That technical issue that Airbus flagged, that didn't have
2 anything to do with an AMCK request for delay, is that right?

3 A. That's right.

4 Q. Mr. Thwaytes, I'd like to show you what's been marked as
5 Joint Trial Exhibit 48. And I believe you testified about this
6 document earlier. But just to confirm, did you understand that
7 Jane O'Callaghan from AMCK was e-mailing you on March 26, 2020,
8 with AMCK's proposal on rent deferral issues?

9 A. Yes.

10 Q. And in the first bullet point in her e-mail,
11 Ms. O'Callaghan refers to the SLB aircraft that is scheduled to
12 be delivered in April 2020, MSN 9549. Do you see that?

13 A. I do.

14 Q. And was that the aircraft that Airbus had notified you had
15 a technical problem?

16 A. I believe it is, but I'm not certain of the MSN. It was a
17 long time ago.

18 Q. I'd also like to point you to the second bullet of this
19 e-mail which refers to AMCK's request that the remaining four
20 SLB aircraft that are scheduled to be delivered in May through
21 July 20 be delayed by three to six months. Do you see that?

22 A. Yes.

23 Q. Did you understand that as part of its response to
24 Frontier's request for a rent deferral, AMCK was proposing in
25 return concessions from Frontier under the Framework Agreement?

O483FRO3

Thwaytes - Cross

1 A. If moving aircraft, delaying aircraft is considered a
2 concession, then yes.

3 Q. Do you recall that AMCK proposed any other concessions
4 under the Framework Agreement, besides moving aircraft?

5 A. At what point in time?

6 Q. Well, at any point in time. Are you aware of AMCK
7 proposing that Frontier provide concessions under the Framework
8 Agreement?

9 A. Yes.

10 Q. Besides aircraft deliveries?

11 A. Yes.

12 Q. One of those proposals is in this e-mail, isn't it? In the
13 first bullet, AMCK was proposing a holdback of rent on the
14 agreed purchase price of \$51 million relating to MSN 9549,
15 right?

16 A. Yes.

17 Q. You testified about MSN 9549, and you weren't sure about
18 the number, but that may have been the technical issue aircraft
19 that Airbus had notified you of?

20 A. May have been.

21 Q. I'd like to show you what's marked as Joint Trial
22 Exhibit 56. And I believe you testified about this exhibit
23 earlier, Mr. Thwaytes, but does this is April 2 e-mail from you
24 to Airbus personnel refresh your recollection that MSN 9549 was
25 the technical issue aircraft that we were discussing?

O483FRO3

Thwaytes - Cross

1 A. Yes.

2 Q. And in the second paragraph of this e-mail, you mentioned
3 that you had received verbal notice in afternoon from your
4 financier, and you testified earlier that that referred to
5 AMCK. Is that right?

6 A. Yes.

7 Q. So, you asked Airbus to consider moving aircraft deliveries
8 at least by April 2, 2020, is that correct?

9 A. If you read this e-mail, we advised them that our financier
10 was uncomfortable funding deliveries, so we told them we
11 anticipated that they would work with us to manage upcoming
12 deliveries.

13 Q. In the discussions between Frontier and Airbus, did the
14 parties discuss changing only the schedule for aircraft covered
15 by the Framework Agreement?

16 A. No.

17 Q. So you discussed changing the schedule for non-Framework
18 Agreement aircraft as well, correct?

19 A. When you move aircraft into other periods, you have to move
20 those aircraft into other periods, so there is a cascading
21 effect by moving any aircraft.

22 Q. And as of March 2020, do you recall how many aircraft were
23 scheduled for delivery in 2020?

24 A. I don't recall the number.

25 Q. Do you know if Frontier and Airbus discussed delaying all

O483FRO3

Thwaytes - Cross

1 of the aircraft scheduled for delivery in 2020?

2 A. I don't recall if Frontier and Airbus discussed that.

3 Q. You mentioned a cascading effect. But isn't it true that
4 Frontier and Airbus discussed delaying aircraft deliveries in
5 2020 at Frontier's request?

6 A. Frontier requested to delay aircraft that AMCK was going to
7 finance into other periods, which then caused a need to delay
8 the aircraft in those other periods into other periods. So, by
9 requesting to move aircraft that AMCK was going to finance, it
10 caused other aircraft need to be moved as well.

11 Q. So is it your testimony that all of the aircraft that were
12 moved as a result or that were moved in connection with these
13 2020 discussions with Airbus, were solely due to AMCK's
14 request?

15 A. Unless Airbus had other reasons to propose moving aircraft
16 to accommodate their manufacturing process.

17 Q. Mr. Thwaytes, I'd like to show you what's marked as Joint
18 Trial Exhibit 176 which is a copy of your deposition in this
19 case. Do you recall having your deposition taken?

20 A. Yes.

21 Q. And I'd like to put up on screen page 108 of your
22 deposition. And I direct you to line 16 which is toward the
23 bottom but if we could pull that up a little bit. Do you see
24 that at line 16, you were asked:

25 "Q. Other than the aircraft subject to the Framework

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Thwaytes - Cross

1 Agreement, how did Frontier choose what other aircraft to seek
2 delivery changes for?

3 "A. Based off of the impact on PDP payments and impact on cash
4 flows from the delivery of the aircraft. So the total cash
5 flow impact, and then also looking at capacity. Really a cash
6 flow exercise and then a capacity exercise."

7 Do you see that?

8 A. Yes.

9 Q. Were you asked that question and did you give that answer?

10 A. If it's written here, then I assume yes.

11 Q. You testified about the cascading effect of aircraft
12 deliveries. Mr. Thwaytes, isn't it true that the cascading
13 effect of deliveries would take place in later years?

14 A. No, it would take place in near -- in the current year, if
15 aircraft would be moved within the current year, and then in
16 later years, as the aircraft in the current year have to be
17 moved out into the next year and so on.

18 Q. Wasn't Frontier seeking to delay aircraft in the second
19 half of 2020 and into 2021 to provide cash flow relief and to
20 manage capacity?

21 A. As a result of having to move the AMCK aircraft.

22 Q. You testified earlier that there were there may have been
23 some deliveries that were pushed at Airbus's request?

24 A. Potentially.

25 Q. I'd like to show you your deposition again, Mr. Thwaytes,

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Thwaytes - Cross

1 at page 91, and at line 9 of page 91, you were asked:

2 "Q. How many other aircraft not covered by the Framework
3 Agreement was Frontier seeking a delivery change for?

4 "A. I don't -- I don't recall how many.

5 "Q. Was it more than 50?

6 "A. It's hard to -- it's hard to determine how many because
7 change in delivery schedule for some aircraft can have a
8 cascading effect that causes a change in the delivery schedule
9 for other aircraft.

10 "So I think that the discussions for aircraft
11 delivering in 2020 and into 2021, I believe it's that period of
12 time, but the impact of that it appeared to be more, because it
13 kind of cascades the delivery stream."

14 Were you asked those questions and did you give those
15 answers?

16 A. Yes.

17 Q. You testified about the request by AMCK that Frontier delay
18 delivery schedules with Airbus, and I believe you testified,
19 but I want to confirm, no other lessors asked Frontier to delay
20 delivery of aircraft in 2020; is that right?

21 A. No, not that I recall.

22 Q. Is it correct then that all of the delivery changes -- or
23 strike that.

24 Was it correct that the only delivery delays requested
25 in the 2020 amendment process with Airbus were AMCK related

O483FRO3

Thwaytes - Cross

1 deliveries; is that right?

2 A. Are you talking about specifically Amendment No. 9?

3 Q. In Amendment No. 9, when Frontier and Airbus amended the
4 delivery schedule, no other lessors had requested that Frontier
5 change the delivery schedule; is that right?

6 A. That's right.

7 Q. So those delivery changes were not the result of requests
8 by other lessors?

9 A. No.

10 Q. I'd like to show you what's marked as Joint Trial
11 Exhibit 88. Is it Mr. Thwaytes this appears to be an April 15,
12 2020 e-mail from you to Ashok Shah, Thomas Frey, and Sharath
13 Sashikumar Bindu. Do you see that?

14 A. I do.

15 Q. Did you send this e-mail?

16 A. Yes.

17 MR. ALEXANDER: I'd like to move to admit Joint Trial
18 Exhibit 88.

19 MR. SCHAER: No objection.

20 Q. Mr. Thwaytes, the recipients of this e-mail --

21 THE COURT: Received.

22 (Joint Exhibit 88 received in evidence)

23 Q. -- are those Frontier employees?

24 A. Yes.

25 Q. And in the header of your e-mail it refers to an FFT Airbus

O483FRO3

Thwaytes - Cross

1 delivery schedule scenario 15 April 2020. Do you see that?

2 A. That's the attachment.

3 Q. And do you understand that that's a delivery schedule
4 scenario that Airbus had sent to Frontier in connection with
5 the parties' discussions about delivery delays?

6 A. I assume it is, looking at the trail of e-mails.

7 Q. And the e-mail below that you're referring to, is that the
8 April 15 e-mail from Ray Bishop at Airbus?

9 A. Yes.

10 Q. And what do you understand Mr. Bishop to have been sending
11 to Frontier?

12 A. Proposed revision to the aircraft delivery schedule.

13 Q. Let's look at page 4 of this exhibit. If we can zoom out
14 so you can see the document here. But, do you understand that
15 this is the attachment with the Airbus proposed delivery
16 schedule scenario?

17 A. I assume it is.

18 Q. Do you understand, I believe you testified about at least a
19 version of this chart earlier today. Do you recall that?

20 A. I recall seeing this and I was talking about it.

21 Q. So, the chart shows a number of aircraft deliveries, and
22 then in blue, the schedule for that delivery as of amendment 8,
23 so the original delivery date, right?

24 A. Yup.

25 Q. And then in yellow it shows the proposed delayed delivery

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Thwaytes - Cross

1 date for that aircraft, correct?

2 A. That's right.

3 Q. If you have a look at this chart, do you see that there's
4 about 20 aircraft deliveries in '20 or 2021 as of the original
5 amendment 8 at this time?

6 A. Did you say in 2020 and 2021?

7 Q. So as of this point in time, this chart is showing a number
8 of deliveries for 2020 and 2021. And would you agree that
9 there is about 20 of them?

10 A. Yes.

11 Q. And if you scroll down a little bit, do you see there is a
12 redacted portion of the document. Do you understand what has
13 been redacted at a general level?

14 A. Additional aircraft.

15 Q. Do you know if those deliveries are from later years or
16 later periods of time?

17 A. It's in chronological order, so I'd assume that they would
18 be a continuation of what we're looking at here.

19 Q. And let's look very briefly at the next page of this
20 exhibit, just for reference. The redactions continue. Do you
21 understand that there were a number of aircraft deliveries
22 after this point in time?

23 A. You asked me earlier how many were still to be delivered at
24 this point in time, and I answered 150 to 160. So you can
25 infer from that.

O483FRO3

Thwaytes - Cross

1 Q. Let's go back to the prior page which shows the chart. For
2 the deliveries we can see, which are starting in March 2020 and
3 going up to June 2021, do you agree that all of those scheduled
4 deliveries were being delayed in this proposal?

5 A. Yes.

6 Q. And how many of those aircraft were aircraft covered by the
7 Framework Agreement?

8 A. Six.

9 Q. And I believe you testified earlier that rank 54, which
10 indicates it was delivered, was that a Framework Agreement
11 aircraft?

12 A. Yes.

13 Q. So as of this point in time, how many aircraft deliveries
14 remained to be made under the Framework Agreement?

15 A. Five.

16 Q. So, of the remaining deliveries in this chart, only five of
17 them are Framework Agreement aircraft?

18 A. Yes.

19 Q. And I know you've done this exercise before, Mr. Thwaytes,
20 but if we could just point them out, which are the aircraft
21 deliveries listed here that are covered by the Framework
22 Agreement?

23 A. Ranks 52 to 55 and then ranks 58 and 59.

24 Q. All right. So, the first three deliveries were Framework
25 Agreement aircraft deliveries, correct?

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Thwaytes - Cross

1 A. The first four.

2 Q. Yes. Certainly. But starting with the first three that
3 were scheduled in March, 52, 53 and 54 were all Framework
4 Agreement aircraft, correct?

5 A. Yes.

6 Q. And you testified that 55 was also a Framework Agreement
7 aircraft, right?

8 A. Yes.

9 Q. And that was scheduled to be delivered in May?

10 A. Yes.

11 Q. 56 was not a Framework Agreement aircraft, correct?

12 A. Correct.

13 Q. And that was scheduled to be delivered in May 2020, but in
14 this discussion was being proposed extended to second quarter
15 of 2021, correct?

16 A. Correct.

17 Q. What was the next Framework Agreement aircraft shown in
18 this chart?

19 A. 58.

20 Q. And that's an aircraft that was scheduled to be delivered
21 in June?

22 A. Yes.

23 Q. Looking at the prior row, rank 57, that's also an aircraft
24 scheduled to be delivered in June 2020, correct?

25 A. Yes.

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Thwaytes - Cross

Q. And that was being delayed in this proposal to
September 2020, correct?

A. Correct.

THE COURT: Mr. Alexander, when you get to a stopping
point, we'll stop.

MR. ALEXANDER: Certainly, your Honor. Now's fine if
that's a good time for the Court.

THE COURT: Okay. We'll resume at 11 tomorrow
morning. Have a good evening. We don't have an eclipse to
offer you tomorrow. It will be a dull day, but we're doing
well.

MR. ALEXANDER: Thank you, your Honor.

(Adjourned until April 9, 2024, at 11 a.m.)

JOINT EXHIBITS

Exhibit No.	Received
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1, 2, 3, 4, 5, 19, 22, 24, 25, 26, 28,18
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29, 36, 48, 51, 56, 60, 73,	
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